

FEDERAL TRADE COMMISSION DECISIONS

Findings, Opinions, and Orders

IN THE MATTER OF

WESLEY-JESSEN CORPORATION

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF THE CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3700. Complaint, Jan. 3, 1997--Decision, Jan. 3, 1997

This consent order requires, among other things, an Illinois-based manufacturer of opaque contact lenses to divest, within four months, the Pilkington Barnes Hind's opaque lens business to a Commission-approved acquirer.

Appearances

For the Commission: *Catharine M. Moscatelli and Ann Malester.*

For the respondent: *William C. Pelster, Skadden Arps, New York, N.Y. and Mary Lou Steptoe, Skadden Arps, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, and by virtue of the authority vested in it by said Act, the Federal Trade Commission ("Commission"), having reason to believe that respondent, Wesley-Jessen Corporation ("Wesley-Jessen"), a corporation subject to the jurisdiction of the Commission, has agreed to acquire all of the voting securities of Pilkington Barnes Hind International, Inc. ("PBH International"), a corporation, Barnes-Hind International Inc. ("Barnes-Hind International"), a corporation, Pilkington Barnes Hind (Services) Limited ("PBH Services"), Pilkington Barnes Hind N.V. ("PBH NV"), Pilkington Barnes Hind SA ("PBH France"), Pilkington Barnes Hind, S.A. ("PBH Spain"), Pilkington Barnes-Hind Pty Ltd. ("PBH Australia"), Pilkington Barnes Hind Japan KK ("PBH Japan"), Pilkington Barnes Hind Nederland B.V. ("PBH BV"), Pilkington Barnes Hind SpA ("PBH SpA"), Pilkington Barnes-Hind Limited ("PBH Ltd."), Pilkington Diffractive Lenses Limited ("Diffractive"), Pilkington Barnes Hind, Inc., a corporation, ("PBH"), and certain assets of Pilkington Deutschland GmbH ("PD"), from Pilkington plc ("Pilkington"),

subject to the jurisdiction of the Commission, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act as amended, ("FTC Act"), 15 U.S.C. 45; and it appearing to the Commission that a proceeding in respect thereof would be in the public interest, hereby issues its complaint, stating its charges as follows:

I. RESPONDENT

1. Respondent Wesley-Jessen Corporation ("Wesley-Jessen") is a corporation organized, existing, and doing business under and by virtue of the laws of the state of Delaware, with its principal place of business located at 333 East Howard Avenue, Des Plaines, Illinois.

II. THE ACQUIRED COMPANY

2. Pilkington plc ("PBH") is a corporation organized, existing, and doing business under and by virtue of the laws of the United Kingdom, with its principal place of business located at Prescott Road, St. Helens, Merseyside, England.

III. JURISDICTION

3. Respondent is, and at all times relevant herein has been, engaged in commerce as "commerce" is defined in Section 1 of the Clayton Act, as amended, 15 U.S.C. 12, and is a corporation whose business is in or affects commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act, as amended, 15 U.S.C. 44.

IV. THE ACQUISITION

4. On or about March 27, 1996, Wesley-Jessen and PBH signed a Letter of Intent whereby Wesley-Jessen would acquire all the voting securities of PBH, voting securities of certain foreign issuers controlled by PBH and certain assets located outside the United States for approximately \$80 million ("Acquisition").

V. THE RELEVANT MARKETS

5. For purposes of this complaint, the relevant line of commerce in which to analyze the effects of the Acquisition is the manufacture and sale of opaque contact lenses.

6. For purposes of this complaint, the United States is the relevant geographic area in which to analyze the effects of the Acquisition in the relevant line of commerce.

VI. STRUCTURE OF THE MARKET

7. The market for the manufacture and sale of opaque contact lenses is highly concentrated as measured by the Herfindahl-Hirschmann Index. The parties to the Acquisition combined account for over 90% of the market.

VII. BARRIERS TO ENTRY

8. Entry into the manufacture and sale of opaque contact lenses is difficult and time consuming, requiring the expenditure of significant resources over a period of many years with no assurance that a viable commercial product will result. The existence of broad patents governing design and manufacture make new entry both difficult and unlikely.

VIII. EFFECTS OF THE ACQUISITION

9. The effects of the Acquisition if consummated may be substantially to lessen competition and to tend to create a monopoly in the relevant market in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45, by, among others:

(a) Eliminating actual, direct and substantial competition based on pricing, service and innovation between Wesley-Jessen and PBH International in the relevant market;

(b) Increasing the likelihood that Wesley-Jessen will unilaterally exercise market power in the relevant market;

(c) Creating a dominant firm in the relevant market; and

(d) Enhancing the likelihood of collusion or coordinated interaction between or among the remaining firms in the relevant market.

IX. VIOLATIONS CHARGED

10. The Acquisition described in paragraph four, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

11. The Acquisition agreement described in paragraph four constitutes a violation of Section 5 of the FTC Act, as amended, 15 U.S.C. 45.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of the proposed acquisition by the respondent named in the caption of all of the voting securities of Pilkington Barnes Hind International, Inc. ("PBH International"), a corporation, Barnes-Hind International Inc. ("Barnes-Hind International"), a corporation, Pilkington Barnes Hind (Services) Limited ("PBH Services"), Pilkington Barnes Hind N.V. ("PBH NV"), Pilkington Barnes Hind SA ("PBH France"), Pilkington Barnes Hind, S.A. ("PBH Spain"), Pilkington Barnes-Hind Pty Ltd. ("PBH Australia"), Pilkington Barnes Hind Japan KK ("PBH Japan"), Pilkington Barnes Hind Nederland B.V. ("PBH BV"), Pilkington Barnes Hind SpA ("PBH SpA"), Pilkington Barnes-Hind Limited ("PBH Ltd."), Pilkington Diffractive Lenses Limited ("Diffractive"), Pilkington Barnes Hind, Inc., a corporation, ("PBH"), and certain assets of Pilkington Deutschland GmbH ("PD"), from Pilkington plc ("Pilkington"), and respondent having been furnished thereafter with a copy of a draft of complaint that the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violations of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by respondent of all the jurisdictional facts set forth in the aforesaid draft of the complaint, a statement that the signing of

said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that respondent has violated the said Acts, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent Wesley-Jessen Corporation ("Wesley-Jessen") is a corporation organized, existing, and doing business under and by virtue of the laws of Delaware, with its principal place of business located at 333 East Howard Avenue, Des Plaines, Illinois.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, as used in this order, the following definitions shall apply:

A. "*Respondent*" or "*Wesley-Jessen*" means Wesley-Jessen Corporation, its directors, officers, employees, agents and representatives, predecessors, successors and assigns; its subsidiaries, divisions, affiliates and groups controlled by respondent, and the respective directors, officers, employees, agents, representatives, successors and assigns of each.

B. "*PBH*" means Pilkington plc, a corporation organized, existing and doing business under and by virtue of the laws of England and Wales, with its principal place of business at Prescott Road, St. Helens, Merseyside, England WA 10 3TT, and including all of its subsidiaries, affiliates, divisions and groups.

C. "*Commission*" means the Federal Trade Commission.

D. "*Pilkington Acquisition*" means the acquisition which is the subject of an agreement between Wesley-Jessen and Pilkington dated July 5, 1996, in which respondent will acquire voting securities of Pilkington Barnes Hind International, Inc., Barnes-Hind International Inc., Pilkington Barnes Hind (Services) Limited, Pilkington Barnes Hind N.V., Pilkington Barnes Hind SA, Pilkington Barnes Hind, S.A., Pilkington Barnes-Hind Pty Ltd., Pilkington Barnes Hind Japan KK, Pilkington Barnes Hind Nederland B.V., Pilkington Barnes Hind SpA, Pilkington Barnes-Hind Limited, Pilkington Diffractive Lenses Limited, PBH, and certain assets of Pilkington Deutschland GmbH.

E. "*Acquirer*" means the person to whom Wesley-Jessen divests PBH's Opaque Lens Business pursuant to paragraph II.A of this order.

F. "*New Acquirer*" means the person to whom the trustee divests PBH's Opaque Lens Business pursuant to paragraph V of this order.

G. "*Divestiture Agreement*" means the agreement between Wesley-Jessen and the Acquirer or New Acquirer whereby PBH's Opaque Lens Business is divested.

H. "*Supply Agreement*" means the agreement between Wesley-Jessen and the Acquirer or New Acquirer required by paragraph III.A. of this order.

I. "*Licensed Territory*" means the United States and its territories and possessions.

J. "*Opaque Contact Lenses*" means contact lenses containing opaque materials that cover the iris and that are designed to change the apparent color of the eye.

K. "*PBH's Opaque Lens Products*" means Opaque Contact Lenses researched, developed, manufactured, distributed and sold by PBH in the United States, including but not limited to those marketed and sold under the brand name Natural Touch™.

L. "*PBH's Opaque Lens Business*" means the following rights and assets (other than assets that are part of PBH's physical facilities) relating to the research, development, distribution or sale of PBH's Opaque Lens Products by PBH, including, but not limited to:

(1) All books, records, manuals, reports, lists, advertising and promotional materials, computer records and other documents relating to PBH's Opaque Lens Products;

(2) Natural Touch product line Profit and Loss statements relating to each of PBH's Opaque Lens Products for the United States;

(3) All legal or equitable rights in trademarks and tradenames registered in the United States together with all trademark registrations and applications and trade names therefor relating to PBH's Opaque Lens Products;

(4) All lists of stock keeping units ("SKUs"); *i.e.*, all forms, package sizes and other units in which PBH's Opaque Lens Products are sold and which are used in records of sales and inventories;

(5) All Bills of Materials for each of PBH's Opaque Lens Products, consisting of full manufacturing standards and procedures, quality control specifications, specifications for raw materials and components, including all lists of authorized sources for materials and components;

(6) All artwork and mechanical drawings currently in use relating to each of PBH's Opaque Lens Products;

(7) All customer lists, including but not limited to, lists of distributors, opticians, ophthalmologists, optometrists, and eye-care chains who have bought PBH's Opaque Lens Products, including, but not limited to, all files of names, addresses, and telephone numbers of the individual customer contacts, and the unit and dollar amounts of sales monthly, by product, to each customer in the United States;

(8) All marketing information relating to PBH's Opaque Lens Products, including but not limited to PBH's consumer and trade promotion, marketing and business programs;

(9) Inventories of finished goods, packaging and raw materials relating to PBH's Opaque Lens Products equal to the percentage of PBH's worldwide sales of Opaque Lens Products for which United States sales account as of August 31, 1996;

(10) All documents containing or relating to product testing and laboratory research data relating to PBH's Opaque Lens Products, including but not limited to all regulatory registrations and correspondence;

(11) All consumer correspondence and documents relating to PBH's Opaque Lens Business;

(12) All documents constituting or relating to price lists for PBH's Opaque Lens Products;

(13) All documents and information relating to costs of production for each of PBH's Opaque Lens Products, including but

not limited to raw material costs, packaging costs, and advertising and promotional costs;

(14) All documents containing sales data relating to PBH's Opaque Lens Products;

(15) Subject to the Patent Assignment Agreement granted to Allergan, Inc., dated December 17, 1992, a royalty-free license under the patents listed in Appendix A of this order to manufacture, import, offer for sale, use and sell Opaque Contact Lenses in the Licensed Territory, said license to be exclusive with respect to the sale of Opaque Contact Lenses. Further, Wesley-Jessen Corporation shall release Acquirer or New Acquirer from all claims that Wesley-Jessen has or may have against Acquirer or New Acquirer with respect to PBH's patents listed in Appendix A, including but not limited to the Request for Interference filed on April 11, 1995, by Schering Plough (Wesley-Jessen's U.S. Continuation Application of 07/984,817) against US Patent No. 5,302,978, issued April 12, 1994 (Evans, et al.), provided that said release is not in violation of any applicable law. Further, if, pursuant to any interference proceeding, with respect to the patents listed in Appendix A, Wesley-Jessen is awarded claims in any pending patent application in replacement of the claims presently held in the PBH patents listed in Appendix A, then Wesley-Jessen shall license those claims to Acquirer or New Acquirer under terms consistent with the terms of the license granted in the first sentence of this paragraph. Moreover, if the US Patent Office declares an interference between any Janke patent application and any PBH patent listed in Appendix A, then Wesley-Jessen shall agree to settle the action consistent with the terms of the license granted in the first sentence of this paragraph with all costs and attorneys fees for both parties paid by Wesley-Jessen;

(16) A non-transferable, irrevocable, non-exclusive, royalty-free license under the patents listed in Appendix B of this order to manufacture, import, offer for sale, use and sell Opaque Contact Lenses in the Licensed Territory, except that the Acquirer or New Acquirer may transfer this license as part of a sale of all of PBH's Opaque Lens Business of the Acquirer or New Acquirer but not until the Acquirer or the New Acquirer has obtained all necessary United States Food and Drug Administration ("FDA") approvals to manufacture PBH's Opaque Lens Products for sale in the United States;

(17) A non-transferable, irrevocable, non-exclusive assignment of PBH's rights and obligations under the licensing agreement between Wesley-Jessen and PBH dated August 1, 1994, (or a license providing at least equivalent rights and obligations) to enable the Acquirer or New Acquirer to manufacture, import, offer for sale, use, distribute and sell PBH's Opaque Lens Products in the Licensed Territory, except that the Acquirer or New Acquirer may transfer this assignment as part of a sale of all of PBH's Opaque Lens Business of the Acquirer or New Acquirer but not until the Acquirer or New Acquirer has obtained all necessary FDA approvals to manufacture PBH's Opaque Lens Products and otherwise consistent with the terms of the licensing agreement between Wesley-Jessen and PBH dated August 1, 1994; and

(18) All trade secrets, technology and knowhow of PBH relating to researching, developing, manufacturing, distributing, and selling PBH's Opaque Lens Products, including, but not limited to, books and records, documents containing the results of research and development efforts, filings with the FDA, scientific and clinical reports, designs, manuals, drawings, and design material and equipment specifications.

Provided, however, that Wesley-Jessen may retain copies of documents or information to the extent such documents or information relate to products other than PBH Opaque Lens Products.

M. "*Supplied Products*" means non-disposable opaque colored contact lenses approved by the FDA as daily wear lenses having a planned replacement period of ninety (90) days or more, and which are promoted, advertised or marketed solely as daily wear lenses and are sold in vials with labeling claims for frequency of use and replacement no less restrictive than those currently approved for the PBH Natural Touch™ lenses by the FDA. The specifications for these are:

The polymacon material is a hydrophilic polymer of 2-hydroxyethyl methacrylate cross-linked with ethylene glycol dimethacrylate. When fully hydrated in 0.9% sodium chloride solution, the composition of the polymacon lens is 62% polymacon polymer and 38% water by weight. The material has a refractive index of 1.44, as measured in 0.9% sodium chloride solution. Lenses are tinted with one or more of the following vat dyes: Cl#59825, 69825, 73335, 61725. Lenses range in power from -10.00 to +4.00 (including plano) in quarter diopters, and are to be disinfected using either a thermal (heat), chemical (not heat), or hydrogen peroxide disinfection system.

N. "*Information Relating to Licensing of Patents*" means any information not in the public domain disclosed by the Acquirer or New Acquirer to respondent relating to the assignment of the licensing agreement between Wesley-Jessen and PBH dated August 1, 1994, as referenced in paragraph I.L.17.

II.

It is further ordered, That:

A. Wesley-Jessen shall divest, absolutely and in good faith and at no minimum price, PBH's Opaque Lens Business. PBH's Opaque Lens Business shall be divested within four (4) months of the date this Agreement is signed, to an Acquirer that receives the prior approval of the Commission and only pursuant to a Divestiture Agreement that receives the prior approval of the Commission.

The purpose of this divestiture is to create an independent competitor in the research, development, manufacture, distribution and sale of Opaque Contact Lenses and to remedy the lessening of competition resulting from the Pilkington Acquisition as alleged in the Commission's complaint.

B. Upon reasonable notice and request from the Acquirer or New Acquirer to Wesley-Jessen, Wesley-Jessen shall provide information, technical assistance and advice to the Acquirer or New Acquirer such that the Acquirer or New Acquirer will be capable of continuing the current research, development, manufacture, distribution and sale with respect to PBH's Opaque Lens Products. Such assistance shall include reasonable consultation with knowledgeable employees of Wesley-Jessen and training at the facility of the Acquirer or New Acquirer, sufficient to satisfy the management of the Acquirer or New Acquirer that its personnel are adequately knowledgeable about PBH's Opaque Lens Products. However, respondent shall not be required to continue providing such assistance for more than eighteen (18) months after divestiture to the Acquirer or New Acquirer of PBH's Opaque Lens Products. Respondent may require reimbursement from the Acquirer or New Acquirer for all of its own direct costs incurred in providing the services required by this subparagraph. Direct costs, as used in this subparagraph, means all actual costs incurred exclusive of overhead costs.

C. Pending the divestiture of PBH's Opaque Lens Business, respondent shall take such actions as are necessary to maintain the viability and marketability of PBH's Opaque Lens Business (including, but not limited to, any planned research and development programs, marketing plans, capital improvements, or business plans) and to prevent the destruction, removal, wasting, or impairment of PBH's Opaque Lens Business except for ordinary expiration of patents and ordinary wear and tear.

III.

It is further ordered, That:

A. Respondent shall enter into a Supply Agreement with the Acquirer or New Acquirer contemporaneously with the Divestiture Agreement. The Supply Agreement shall be subject to the prior approval of the Commission and shall require the respondent to supply the Acquirer or New Acquirer with the amount of Supplied Products requested by the Acquirer or New Acquirer. The Supply Agreement will remain in effect for eighteen (18) months; provided, however, the 18 month period may be extended by the Commission for a period not to exceed 24 months, if the Commission determines that the Acquirer or New Acquirer made a good faith effort to obtain all necessary FDA approvals for the manufacture of PBH's Opaque Lens Products and that such FDA approvals appear likely to be obtained within the extended time period.

During the term of the Supply Agreement, upon reasonable request by the Acquirer or New Acquirer Wesley-Jessen shall make available to the Acquirer or New Acquirer all records kept in the normal course of business that relate to the cost of manufacturing the Supplied Products.

B. The Divestiture Agreement shall include the following and Wesley-Jessen shall commit to satisfy the following:

1. Wesley-Jessen shall commence delivery of Supplied Products to the Acquirer or the New Acquirer within two (2) months from the date the Commission approves the Acquirer and the Divestiture Agreement (or the New Acquirer and its Divestiture Agreement), or such later time as the Acquirer or New Acquirer may require.

2. Wesley-Jessen shall make representations and warranties to the Acquirer or New Acquirer that the Supplied Products meet FDA approved specifications therefor and are not adulterated or misbranded within the meaning of the Food, Drug and Cosmetic Act, 21 U.S.C. 321, *et seq.* Wesley-Jessen shall agree to indemnify, defend and hold the Acquirer or New Acquirer harmless from any and all suits, claims, actions, demands, liabilities, expenses or losses alleged to result from the failure of the Supplied Products supplied by Wesley-Jessen to meet FDA specifications. This obligation may be contingent upon the Acquirer or the New Acquirer giving Wesley-Jessen prompt, adequate notice of such claim, cooperating fully in the defense of such claim, and permitting Wesley-Jessen to assume the sole control of all phases of the defense and/or settlement of such claim, including the selection of counsel. This obligation shall not require Wesley-Jessen to be liable for any negligent act or omission of the Acquirer or New Acquirer or for any representations and warranties, express or implied, made by the Acquirer or New Acquirer that exceed the representations and warranties made by Wesley-Jessen to the Acquirer or New Acquirer, as applicable.

3. The Divestiture Agreement shall require the Acquirer or New Acquirer to submit to the Commission with the divestiture application, a certification attesting to the good faith intention of the Acquirer or New Acquirer, and including an actual plan by the Acquirer or New Acquirer, to obtain in an expeditious manner all necessary FDA approvals to manufacture PBH's Opaque Lens Products for sale in the United States.

4. The Divestiture Agreement shall require the Acquirer or New Acquirer to submit to the trustee appointed pursuant to paragraph IV. of this order periodic verified written reports setting forth in detail the efforts of the Acquirer or New Acquirer to sell in the United States PBH's Opaque Lens Products supplied by Wesley-Jessen and to obtain all FDA approvals necessary to manufacture its own PBH's Opaque Lens Products for sale in the United States. The Divestiture Agreement shall require such reports to be submitted 60 days from the date the Divestiture Agreement is approved by the Commission and every 90 days thereafter until all necessary FDA approvals are obtained by the Acquirer or New Acquirer to manufacture PBH's Opaque Lens Products for sale in the United States. The Divestiture Agreement shall also require the Acquirer or New Acquirer to report to the Commission and the trustee at least thirty (30) days prior to its

ceasing the manufacture or sale of PBH's Opaque Lens Products in the United States for any time period exceeding sixty (60) days or abandoning its efforts to obtain all necessary FDA approvals to manufacture its own PBH's Opaque Lens Products for sale in the United States.

C. The Divestiture Agreement shall provide that the Commission may terminate the Divestiture Agreement if the Acquirer or New Acquirer: (1) ceases for sixty (60) days or more the sale of PBH's Opaque Lens Products prior to obtaining all necessary FDA approvals to manufacture PBH's Opaque Lens Products for sale in the United States; (2) abandons its efforts to obtain all necessary FDA approvals to manufacture PBH's Opaque Lens Products for sale in the United States; or (3) fails to obtain all necessary FDA approvals to manufacture PBH's Opaque Lens Products for sale in the United States within eighteen (18) months from the date the Commission approves a Divestiture Agreement with the Acquirer or New Acquirer; provided, however, that the eighteen (18) month period may be extended for a period not to exceed twenty-four (24) months if the Commission determines that the Acquirer or the New Acquirer made good faith efforts to obtain all necessary FDA approvals for manufacturing PBH's Opaque Lens Products for sale in the United States and that such FDA approvals appear likely to be obtained within the extended time period.

D. While the obligations imposed by paragraphs II and III of this order are in effect, respondent shall take such actions as are necessary: (1) to maintain all necessary FDA approvals to research, develop, manufacture, offer for sale, use and sell PBH's Opaque Lens Products in the United States; (2) to maintain the viability and marketability of PBH's Opaque Lens Business as well as all tangible assets, including manufacturing facilities needed to contract manufacture the Supplied Products; and (3) to prevent the destruction, removal, wasting, deterioration or impairment of any of PBH's Opaque Lens Business or tangible assets including manufacturing facilities needed to contract manufacture and sell PBH's Opaque Lens Products except for ordinary wear and tear.

E. Respondent shall not provide, disclose or otherwise make available to any department/division of respondent other than the legal and accounting departments any Information Relating to Licensing of Patents.

F. Respondent shall use any Information Relating to Licensing of Patents obtained by respondent only in respondent's capacity as a licensor of certain patents in order to collect royalties, pursuant to paragraph II of this order.

IV.

It is further ordered, That:

A. Within three (3) months of the date this Agreement is signed, or any time thereafter, the Commission may appoint a trustee to monitor that Wesley-Jessen and the Acquirer or New Acquirer expeditiously perform their respective responsibilities as required by this order, the Divestiture Agreement, and the Supply Agreement approved by the Commission. Wesley-Jessen shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, and responsibilities:

(1) The Commission shall select the trustee, subject to the consent of Wesley-Jessen, which consent shall not be unreasonably withheld. If Wesley-Jessen has not opposed, in writing, including the reasons for opposing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission to Wesley-Jessen of the identity of any proposed trustee, Wesley-Jessen shall be deemed to have consented to the selection of the proposed trustee.

(2) The trustee shall have the power and authority to monitor respondent's compliance with the terms of this order and the compliance of the respondent with the terms of the Divestiture Agreement and the Supply Agreement. If directed by the Commission to divest PBH's Opaque Lens Business pursuant to paragraph V of this order, the Trustee shall also have the power and the authority as described in paragraph V to divest those assets.

(3) Within ten (10) days after appointment of the trustee, Wesley-Jessen shall execute a trust agreement that, subject to the prior approval of the Commission, confers on the trustee all the rights and powers necessary to permit the trustee to monitor respondent's compliance with the terms of this order and with the Divestiture Agreement and the Supply Agreement with the Acquirer or New Acquirer and to monitor the compliance of the Acquirer or New Acquirer under the Divestiture Agreement and the Supply

Agreement. Further, the trust agreement shall confer on the trustee all the rights and powers necessary for the trustee to divest PBH's Opaque Lens Business pursuant to paragraphs II and V of this order, if necessary.

(4) The trustee shall serve until such time as the Acquirer or the New Acquirer has received all necessary FDA approvals to manufacture PBH's Opaque Lens Products for sale in the United States.

(5) The trustee shall have full and complete access to the personnel, books, records, documents, facilities and technical information relating to the research, development, manufacture, importation, distribution and sale of PBH's Opaque Lens Products, or to any other relevant information, as the trustee may reasonably request, including but not limited to all documents and records kept in the normal course of business that relate to the cost of manufacturing PBH's Opaque Lens Products. Respondent shall cooperate with any reasonable request of the trustee. Respondent shall take no action to interfere with or impede the trustee's ability to monitor respondent's compliance with paragraphs I and III of this order and the Divestiture Agreement and Supply Agreement with the Acquirer or the New Acquirer.

(6) The trustee shall serve, without bond or other security, at the cost and expense of Wesley-Jessen, on such reasonable and customary terms and conditions as the Commission may set. The trust agreement shall provide that, if the Commission directs the trustee to divest PBH's Opaque Lens Business, the trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting PBH's Opaque Lens Business. The trustee shall have authority to employ, at the cost and expense of Wesley-Jessen, such consultants, accountants, attorneys and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all expenses incurred, including fees for his or her services, subject to the approval of the Commission.

(7) Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparations for, or defense of any claim whether or not resulting in any liability, except to the extent

that such liabilities, losses, damages, claims, or expenses result from the misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

(8) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph IV of this order.

(9) The Commission may on its own initiative or at the request of the trustee issue such additional orders or directions as may be necessary or appropriate to assure compliance with the requirements of paragraph II of this order and the Divestiture Agreement and Supply Agreement with the Acquirer or the New Acquirer.

(10) The trustee shall report in writing to the Commission every three months concerning compliance by the respondent and the Acquirer or the New Acquirer with the provisions of paragraphs II and III of this order and the efforts of the Acquirer or the New Acquirer to receive all necessary FDA approvals to manufacture Opaque Contact Lenses for sale in the United States.

B. Respondent shall comply with all reasonable directives of the trustee regarding respondent's obligation to cooperate with the trustee's efforts to monitor the compliance of the respondent and the Acquirer or New Acquirer with this order, the Divestiture Agreement, and the Supply Agreement.

C. If the Commission terminates the Divestiture Agreement pursuant to paragraph III.C of this order, the Commission may direct the trustee to seek a New Acquirer, as provided for in paragraph V of this order.

V.

It is further ordered, That:

A. If Wesley-Jessen has not divested PBH's Opaque Lens Business as required by paragraph II.A of this order, or if the Commission terminates the Divestiture Agreement pursuant to paragraph III.C of this order, the Commission may direct the trustee appointed pursuant to paragraph IV of this order to divest PBH's Opaque Lens Business. In the event that the Commission or the Attorney General brings an action pursuant to Section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45(l), or any other statute

enforced by the Commission, Wesley-Jessen shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to Section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by the respondent to comply with this order.

B. If the trustee is directed by the Commission or a court pursuant to paragraph V.A of this order to divest PBH's Opaque Lens Business, respondent shall consent to the following terms and conditions regarding the trustee's powers, duties, authority, and responsibilities:

(1) Subject to the prior approval of the Commission, the trustee shall have the exclusive power and authority to divest PBH's Opaque Lens Business.

(2) The trustee shall have twelve (12) months from the date the Commission directs the trustee to divest PBH's Opaque Lens Business to accomplish the divestiture of PBH's Opaque Lens Business, which divestiture shall be subject to the prior approval of the Commission. If, however, at the end of this twelve (12) month period, the trustee has submitted a divestiture candidate or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Commission, or, in the case of a court-appointed trustee, by the court; provided, however, the Commission may extend the twelve (12) month period only two (2) times.

(3) The trustee shall have full and complete access to the personnel, documents, books, records and facilities related to PBH's Opaque Lens Business and to any other relevant information, as the trustee may request. Respondent shall develop such financial or other information as the trustee may request and shall cooperate with the trustee. Respondent shall take no action to interfere with or impede the trustee's accomplishment of the divestiture. Any delays in divestiture caused by respondent shall extend the time to accomplish the divestiture under this paragraph in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

(4) The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Commission, subject to respondent's absolute and unconditional obligation to divest at no minimum price. The divestiture shall be made pursuant to a Divestiture Agreement approved by the Commission and to a New Acquirer approved by the Commission; provided, however, if the trustee receives *bona fide* offers from more than one entity, and if the Commission determines to approve more than one such entity, the trustee shall divest to the entity selected by respondent from among those approved by the Commission.

(5) The trustee shall serve, without bond or other security, at the cost and expense of respondent, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have the authority to employ, at the cost and expense of respondent, such consultants, accountants, attorneys, investment bankers, business brokers, appraisers, and other representatives and assistants as are necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of the respondent, and the trustee's power to divest PBH's Opaque Lens Business pursuant to this paragraph shall be terminated.

(6) Respondent shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising out of, or in connection with, the performance of the trustee's duties, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for, or defense of any claim, whether or not resulting in any liability, except to the extent that such liabilities, losses, damages, claims, or expenses result from misfeasance, gross negligence, willful or wanton acts, or bad faith by the trustee.

(7) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in paragraph IV.A of this order.

(8) The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee

issue such additional orders or directions as may be necessary or appropriate to accomplish the divestiture required by this order.

(9) The trustee shall have no obligation or authority to operate or maintain PBH's Opaque Lens Business.

(10) The trustee shall report in writing to respondent and the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestiture.

VI.

It is further ordered, That, for a period of ten (10) years after the date the order becomes final, respondent shall not, without prior notice to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire more than 5% of any stock, share capital, equity, or other interest in any concern, corporate or non-corporate, engaged in at the time of such acquisition, or within the two years preceding such acquisition, the research, development, manufacture, importation, distribution or sale of opaque contact lenses in the United States; or

B. Acquire any assets at the time of the proposed acquisition used for or used in the previous two years for (and still suitable for use for) the research, development, manufacture, distribution or sale of Opaque Contact Lenses in the United States. Provided, however, that this paragraph VI shall not apply to the acquisition of equipment, machinery, supplies or facilities constructed, manufactured or developed by or for respondent.

The prior notifications required by this paragraph VI shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations, as amended (hereinafter referred to as "the Notification"), and shall be prepared and transmitted in accordance with the requirements of that part, except that no filing fee will be required for any such notification, notification shall be filed with the Secretary of the Commission, notification need not be made to the United States Department of Justice, and notification is required only of respondent and not of any other party to the transaction. Respondent shall provide the Notification to the Commission at least thirty (30) days prior to consummating any such transaction (hereinafter referred to

as the "first waiting period"). If, within the first waiting period, representatives of the Commission make a written request for additional information, respondent shall not consummate the transaction until twenty (20) days after substantially complying with such request for additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted by letter from the Bureau of Competition. Notwithstanding, prior notification shall not be required by this paragraph for a transaction for which notification is required to be made, and has been made, pursuant to Section 7A of the Clayton Act, 15 U.S.C. 18a.

VII.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate structure of respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, or the creation or dissolution of subsidiaries or any other change in the corporation that may affect compliance obligations arising out of this order.

VIII.

It is further ordered, That respondent, for the purpose of determining and securing compliance with this order, and subject to any legally recognized privilege, upon written request and on five (5) days' notice to respondent, shall permit any duly authorized representative(s) of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this order; and

B. Upon five (5) days' notice to respondent, and without restraint or interference from respondent, to interview respondent's officers, directors, or employees, who may have counsel present, regarding such matters.

IX.

It is further ordered, That this order shall terminate on January 3, 2017.

APPENDIX A

<u>Patent No.</u>	<u>Title</u>	<u>Inventor</u>	<u>Country</u>	<u>Issue or Grant Date</u>
5,034,166	Method of Molding a Colored Contact Lens	Rawlings, et. al.	U.S.	July 23, 1991
5,116,112	Colored Lens and Method of Manufacture	Rawlings	U.S.	May 26, 1992
5,120,121	Colored Lens	Rawlings, et. al.	U.S.	June 9, 1992
5,158,718	Contact Lens Casting (corona mold treatment)	Thakrar et. al.	U.S.	October 27, 1992
5,160,463	Method of Manufacturing Contact Lens	Evans et. al.	U.S.	November 3, 1992
5,302,978	Contact Lens (limbal ring)	Evans, et. al.	U.S.	April 12, 1994
Application 08/053,504	Novel Colored lens and method of manufacture	Rawlings, et. al.	U.S.	April 26, 1993 filing date. Earliest effective filing date July 21, 1988
Application 08/143,373	Colored Contact Lens and Method for Making Same	Thakrar, et. al.	U.S.	October 26, 1993, filing date. Earliest effective date, February 16, 1989

APPENDIX B

<u>Patent No.</u>	<u>Title</u>	<u>Inventor</u>	<u>Country</u>	<u>Issue or Grant Date</u>
4,955,580	Contact Lens Mold (no lip molding)	Seden et. al.	U.S.	September 11, 1990
5,036,971	Molding Contact Lenses (no lip molding)	Seden et. al.	U.S.	August 6, 1991
5,114,629	Process for Casting Lenses (lens casting)	Morland, et. al.	U.S.	May 19, 1992
4,944,899	Process and Apparatus for Casting Lenses (lens casting)	Morland, et. al.	U.S.	July 31, 1990

IN THE MATTER OF

FILTRATION MANUFACTURING, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3702. Complaint, Jan. 6, 1997--Decision, Jan. 6, 1997

This consent order prohibits, among other things, an Alabama-based corporation and three of its officers from making any representation regarding the performance, health or other benefits, or efficacy of air cleaning products, and from using the name "Allergy 2000" or any other trade names that represents that such products will relieve allergy symptoms, unless the respondents possess competent and reliable scientific evidence to substantiate such representations.

Appearances

For the Commission: *Brinley H. Williams* and *Michael Milgrom*.
For the respondents: *Thomas Collins, Jr.*, Cleveland, OH.

COMPLAINT

The Federal Trade Commission, having reason to believe that Filtration Manufacturing, Inc., a corporation, and Gary L. Savell, Horace R. Allen, and Brandon R. Clausen, individually and as officers of said corporation ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Filtration Manufacturing, Inc., is an Alabama corporation with its principal office or place of business at 1110 Montlimar Place, Suite 290, Mobile, Alabama.

Respondent Gary L. Savell is the President, Chief Executive Officer, and an owner and director of the corporate respondent. His principal office or place of business is the same as that of the corporate respondent. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint.

Respondent Horace R. Allen is the Secretary, Treasurer, and an owner and director of the corporate respondent. His principal office or place of business is the same as that of the corporate respondent. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint.

Respondent Brandon R. Clausen is the Vice President, and an owner and director of the corporate respondent. His principal office or place of business is the same as that of the corporate respondent. Individually or in concert with others, he formulates, directs, and controls the acts and practices of the corporate respondent, including the acts and practices alleged in this complaint.

PAR. 2. Respondents have manufactured, labeled, advertised, promoted, offered for sale, sold, and distributed the "Allergy 2000" air filters.

PAR. 3. The acts and practices of respondents alleged in this complaint have been in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondents have disseminated or have caused to be disseminated advertisements and promotional materials for the Allergy 2000 air filters, including but not necessarily limited to the attached Exhibits A through G. These advertisements contain the following statements and depictions:

1. Prescribe the ultimate in care for your patient's indoor air today!

* * *

Clearly improving the quality of air your patients breathe can be an important step to improving their overall health.

How? By prescribing the Allergy 2000 air conditioning filter. This super high efficiency four-stage electrostatic air filter with advanced state-of-the-art materials and a computerized design to provide the perfect mixture of air filtration and air flow.

Studies by independent labs have confirmed that the Allergy 2000 gathers an exceptionally wide range of indoor contaminants, including microscopic germ-carrying particles of 5 microns or less. By contrast, most commercially purchased fiberglass filters are only 7% efficient in stopping dirt, dust, pollen, etc. passing through it, according to ASHRAE.

The extremely low resistance of the Allergy 2000 means less strain on the air conditioning unit, which means higher efficiency and energy savings-so it can literally pay for itself! (Exhibit A.)

2. Isn't it time you stopped leaving your family's health up in the air?

Introducing the amazing Allergy 2000. The last air conditioning filter you'll ever buy.

* * *

Superior arrestance capability, 83% average with 85% peak. Superior loading capacity, 150 grams holding capacity.

* * *

The ultimate care for your air!

The Allergy 2000 represents the absolute state-of-the-art in air conditioning filter technology, providing the perfect mixture of air filtration and air flow. Scientific studies have shown that it gathers an exceptionally wide range of indoor contaminants, including microscopic germ-carrying particles. In fact, the ALLERGY 2000 can be paid for by some health insurance when prescribed by a doctor! Considering all the contaminants floating around in the air, installing an ALLERGY 2000 may be the best thing you will ever do for the health of you and your family. (Exhibit B.)

3. Traps allergy causing contaminants: Dust, Pollen, Mold Spores, Pet Dander & Smoke.

* * *

Traps more particles while maintaining greater air flow.

* * *

For a cleaner, healthier indoor environment! (Exhibit C.)

4. The Ultimate Care for your indoor air!

* * *

Among the lowest initial resistance in the industry, .13, meaning less strain on the unit, higher efficiency and energy savings.

* * *

Your indoor pollution solution! (Exhibit D.)

5. The cold and flu season, traditionally only associated with the winter months (when people are forced to stay indoors), has gradually expanded to almost year-round. Why? One key factor may well be that buildings are now much more tightly sealed and energy efficient. They just don't "breathe" like they used to, and the air in them is more polluted than ever.

What can you do to help? Plenty. You can treat these illnesses before they become illnesses. You can treat the cause instead of the effects. You can treat the air.

How? By prescribing the Allergy 2000 air filter for your patients suffering from sinus or respiratory ailments. The Allergy 2000's unique design and construction removes many allergy and disease-causing contaminants from the air before they're inhaled. The result—a cleaner, healthier indoor environment. (Exhibit E.)

6. Constructed of durable space-age materials, ALLERGY 2000's unique design uses static electricity to attract and hold indoor pollutants and germ-carrying particles of 5 microns or less.

* * *

Superior arrestance capabilities, 85% peak.

Superior loading capacity, 150 grams psi. (Exhibit F.)

7. DID YOU KNOW . . .

-- That common house dust is more dangerous than outside dust? (Environmental Protection Agency.)

-- That indoor air is found to be up to 70 times more polluted than outdoor air?

-- That 50% of all illnesses are either caused or aggravated by polluted indoor air? (American College of Allergists.) (Exhibit G.)

PAR. 5. Through the use of the trade name, Allergy 2000, and the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through G, respondents have represented, directly or by implication, that:

A. Use of the Allergy 2000 filter will substantially reduce the incidence of allergies caused by indoor allergens under household living conditions.

B. Use of the Allergy 2000 filter will substantially reduce the amount of disease-causing germs in the air people breathe under household living conditions.

C. Use of the Allergy 2000 filter will substantially reduce the incidence of disease caused by germs in the air people breathe under household living conditions.

D. People living in homes using the Allergy 2000 air filter will be healthier and have fewer illnesses than they would if a conventional filter were used.

E. The Allergy 2000 air filter removes substantially all of the airborne contaminants, including allergens, from the air people breathe under household living conditions.

F. Replacement of conventional air filters with the Allergy 2000 will result in lower utility bills for households.

PAR. 6. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through G, respondents have represented, directly or by implication, that at the time they made the representations set forth in paragraph five, respondents possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 7. In truth and in fact, at the time they made the representations set forth in paragraph five, respondents did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Complaint

EXHIBIT A



Most allergists and other physicians have prescribed the Allergy 2000 for their patients.

...the air cause for your patients.

But did you also know that indoor air is found to be up to 10 times more polluted than outdoor air? Or that 50% of all illnesses are either caused or aggravated by polluted indoor air?

Clearly, improving the quality of air your patients breathe can be an important step to improving their overall health.

How? By prescribing the Allergy 2000 air conditioning filter. This super high efficiency four-stage electrostatic air filter which advanced state-of-the-art materials and a computerized design to provide the perfect mixture of air filtration and air flow.

Studies by independent labs have confirmed that the Allergy 2000 gathers an exceptionally wide range of indoor contaminants, including microscopic germ-carrying particles of 5 microns or less. By contrast, most commercially purchased fiberglass filters are only 7% efficient in stopping dirt, dust, pollen, etc. passing through it, according to ASHRAE.



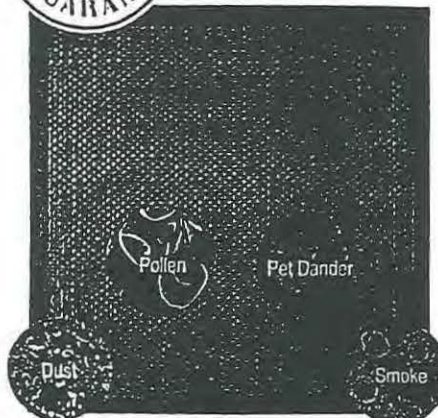
Prescribe the ultimate in care for your patient's indoor air today!

The extremely low resistance of the Allergy 2000 means less strain on the air conditioning unit, which means higher efficiency and energy savings—so it can literally pay for itself!

Best of all, the Allergy 2000 represents an exceptional value for your patients. It is a permanent air conditioning filter with a lifetime guarantee. It uses NO FOAM, so there's nothing to clog, degrade or replace—ever! Plus, it cleans in a snap—and it cleans 100% every time.



When you agree to prescribe the Allergy 2000 for your patients, we'll provide you with an attractive, compact display to put in your office waiting room.



Most commercially purchased fiberglass filters are only 7% efficient in stopping pollutants passing through it. (ASHRAE) The Allergy 2000 traps these allergy-causing contaminants!

*Source: Environmental Protection Agency **Source: American College of Allergists



The display affords your patients easy access to a colorful and informative Allergy 2000 brochure.

As a physician, you've seen the problem caused by all the things going around in the air. Give your patients a new measure of relief—the Allergy 2000 air conditioning filter. We'll catch it, before your patients do.

**ALLERGY
2000**



EXHIBIT B

ISN'T IT TIME YOU STOPPED LEAVING YOUR FAMILY'S HEALTH UP IN THE AIR?



Introducing the amazing
Allergy 2000.

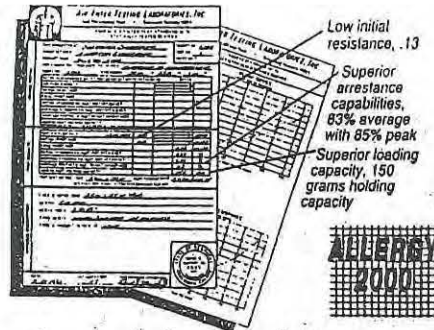
The last
air conditioning filter
you'll ever buy!

Dust, pollen, mold spores,
pet dander and smoke. These are
just a few of the contaminants you
breathe every day—inside your
homes, workplaces; anywhere
you're indoors. As buildings
become more energy efficient, the
indoor pollution problem will
only get worse.

Fortunately, there is an answer! The ALLERGY 2000, a super high efficiency four-stage electrostatic air filter designed to trap more airborne particles for a far cleaner and healthier indoor environment. It's your indoor pollution solution!

Permanent...lifetime guarantee!

Constructed of durable space age materials, the ALLERGY 2000's computerized peak and valley design uses the natural phenomenon of static electricity to attract and hold indoor pollutants. There's NO FOAM to clog, degrade or replace—ever! Since your ALLERGY 2000 has a lifetime guarantee, it's literally the last air conditioning filter you'll ever buy!



Among the lowest resistance in the industry!

The unique design of the ALLERGY 2000 gives it an initial resistance of .13, among the lowest in the industry! This means less strain on the operating unit, much higher efficiency, and energy savings.

Easy to install. Easy to maintain.

Your ALLERGY 2000 installs as easily as any disposable air conditioning filter. And it cleans in a snap: simply back wash with light water hose spray to release particles. Since it uses no foam, it cleans 100% every time. Best of all, the ALLERGY 2000 is an environmentally friendly product, because there's nothing to dispose of!

Superior design and construction

FOAMLESS filtering media.
No clogging or degradation—ever.
Cleans 100% every time.

Polyglass charged cell and computerized peak and valley design. Catches airborne particles while allowing maximum air flow.

Polystyrene frame, not aluminum.

Traps allergy-causing contaminants

PLANT	ANIMAL	MANMADE
Mold Spores	Pet Dander	Acid rain
Cellulose	Housedust Mites	Dacron
Cotton	Fragments	Fiberglass
Linen	Feathers	Lycra
Kapok	Moths	Nylon
Jute	Cockroaches	Orlon
Wood	Spiders	Rayon
Pollen	Silverfish	Spartan
	Fleas	Paint
	Mosquitoes	Plastic
	Silk	Rubber
	Felts	Smoke
	Furs	Fireplace
	Wool	
	Mohair	

The ultimate care for your air

The ALLERGY 2000 represents the absolute state-of-the-art in air conditioning filter technology, providing the perfect mixture of air filtration and flow. Scientific studies have shown that it catches an exceptionally wide range of indoor contaminants, including microscopic germ-carrying particles. In fact, the ALLERGY 2000 can be paid for by some health insurance when prescribed by a doctor! Consider the contaminants floating around in the air, and the ALLERGY 2000 may be the best thing you can do for the health of you and your family.

Standard Sizes Include:

12 X 12	15 X 20	20 X 24
12 X 20	16 X 16	20 X 25
12 X 24	16 X 20	20 X 30
12 X 25	16 X 24	24 X 24
14 X 20	16 X 25	24 X 30
14 X 24	18 X 18	25 X 25
14 X 25	18 X 25	
14 X 30	20 X 20	

Custom Sizes Also Available!
Need a non-standard size for your system? The Allergy 2000 can be custom sized to fit your size requirements.

000126

ALLERGY 2000



allergy-causing
contaminants:
DUST, POLLEN, MOLD SPORES,
PET DANDER & SMOKE

- ✓ Environmentally friendly -
No foam to clog, degrade or
replace - ever!
- ✓ Saves on energy bills and
extends the life of A/C and
heating units.
- ✓ Traps more particles while
maintaining greater air flow.
- ✓ Paid for by some health
insurance when prescribed
by a doctor.



PERMANENT AIR CONDITIONING FILTER

For A Cleaner, Healthier Indoor Environment!

F-000019

Cleaning Instructions

Backwash on a regular basis with a water hose.
If exposed to smoke or grease, spray with a mild degreaser
& then backwash.



ALL FILTERS MUST
CLASSIFIED BY
UNDERWRITERS LABORATORIES
AS TO FLAMMABILITY
CLASS 2

Filtration Manufacturing, Inc.
P.O. Box 1025 • Andalusia, AL 36420

Filtration Manufacturing, Inc. warrants this product to be free from any defects that are due to any faulty materials or workmanship, under normal use and conditions, for as long as you own it. If warranty service is required during the warranty period, the service will be provided without charge upon delivery of the product to the store with proof of purchase. Should you have any questions, please write to Filtration Manufacturing, Inc. at P.O. Box 1025, Andalusia, AL 36420.

EXHIBIT C

Complaint

Complaint

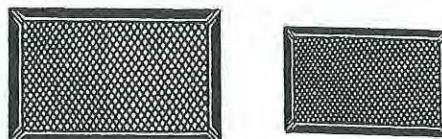
123 F.T.C.

EXHIBIT D

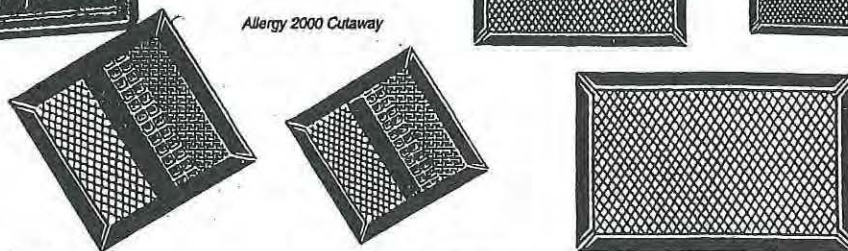
Allergy 2000 Logos



Allergy 2000 Line Art



Allergy 2000 Cutaway



Logos



THE ULTIMATE CARE FOR YOUR INDOOR AIR!

- Permanent air conditioning filter. No metal to rust—ever!
- No foam to clog or degrade. Cleans 100% every time.
- Among the lowest initial resistance in the industry, .13, meaning less strain on the unit, higher efficiency and energy savings.
- Lifetime warranty



ALLERGY 2000



CLEAN UP WITH THE NEW ALLERGY 2000

- Permanent air conditioning filter. No metal to rust—ever!
- No foam to clog or degrade. Cleans 100% every time.
- Among the lowest initial resistance in the industry, .13, meaning less strain on the unit, higher efficiency and energy savings.
- Lifetime warranty



ALLERGY 2000



INVEST IN YOUR FAMILY HEALTH!

YOUR INDO POLLUTION SOLUTION

FOAMLESS! LIFETIME WARRANTY

THE LAST FILTER YOU EVER BUY

EXHIBIT E



Filtration MFG. Inc.
Permanent Air Filter

Sample Cover Letter

Dear Name of Physician:

As you well know, chronic respiratory and allergy-related problems make up a significant portion of commonly treated illnesses. Airborne contaminants not only aggravate typical allergy and hayfever symptoms, but also can carry germs which may be responsible for a host of other sinus and respiratory diseases.

The cold and flu season, traditionally only associated with the winter months (when people are forced to stay indoors), has gradually expanded to be almost year-round. Why? One key factor may well be that buildings are now much more tightly sealed and energy efficient. They just don't "breathe" like they used to, and the air in them is more polluted than ever.

What can you do to help? Plenty. You can treat these illnesses before they become illnesses. You can treat the cause instead of the effects. You can treat the air.

How? By prescribing the Allergy 2000 air filter for your patients suffering from sinus or respiratory ailments. The Allergy 2000's unique design and construction removes many allergy and disease-causing contaminants from the air before they're inhaled. The result: a cleaner, healthier indoor environment.

The enclosed brochure will tell you more. As you'll see, all we ask of you is a very small amount of space in your waiting area for a small rack which holds Allergy 2000 brochures. That's it.

So why not get with the program! We'll provide you with a FREE Allergy 2000 air filter (just tell us the size you need) along with a FREE counter rack and brochures for your waiting room. You'll notice the difference -- and so will your patients!

Thank you very much for your time and consideration.

Sincerely,



EXHIBIT E

F-000022

Complaint

123 F.T.C.

EXHIBIT F

ALLERGY 2000



**AMONG THE
LOWEST
INITIAL RESISTANCE
IN THE INDUSTRY!**

Constructed of durable space-age materials, Allergy 2000's unique design uses static electricity to attract and hold indoor pollutants and germ-carrying particles of 5 microns or less. There's no foam to clog, degrade or replace. And, Allergy 2000 can be paid for by health insurance when prescribed by a doctor.

- No Foam!
- Low Initial Resistance, .13
- Superior Arrestance Capabilities, 85% peak
- Superior Loading Capacity, 150 grams psi
- Tough, Lifetime Construction



For More Information, Please Contact:

000128

Complaint

EXHIBIT G

DID YOU KNOW...

—That common house dust is more dangerous than outside dust?

(Environmental Protection Agency)

—That indoor air is found to be up to 70 times more polluted than outdoor air?

(Environmental Protection Agency)

—That 50% of all illnesses are either caused or aggravated by polluted indoor air?

(American College Of Allergists)

—That nine out of ten system failures are caused by dirt and dust?

(Louisiana Cooperative Extension)

ALLERGY 2000 FEATURES AT A GLANCE.

Low initial resistance, .13	Less strain on operating unit, better efficiency, energy savings
Superior arrestance capabilities, 85% peak arrestance, 83% average	Extends life of coils and unit, saves energy, cleaner and cooler indoor environment
Superior loading capacity, 150 grams per square	Larger gathering capacity of airborne particles, less frequent filter cleaning, maintains lower resistance
FOAMLESS filtering media	No clogging or degradation within filter, cleans 100% every time, maintains low initial resistance
Filter constructed of space age material	Lifetime guaranteed product
Computerized peak and valley design of polypropylene fabric	More effective filtration and air flow, catches airborne particles in valleys — allows maximum air flow to continue over peak areas
Polyglass charged cell	Large charged surface area to gather particles for a cleaner and cooler air
Lifetime warranty	One time purchase, Allergy 2000 can be resealed or reconditioned if you move or purchase new equipment
Environmentally friendly	Helps environment, never becomes part of a landfill

ALLERGY 2000 Distributed By:



AIR FILTER UNIT
CLASSIFIED BY:
UNDERWRITERS LABORATORIES INC.®
AS TO FLAMMABILITY ONLY
CLASS 1

12/93

© 1993 Filtration Manufacturing



Exhibit G

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondents, Filtration Manufacturing, Inc., Gary L. Savell, Horace R. Allen and Brandon R. Clausen, and the respondents having been furnished thereafter with a copy of a draft of the complaint which the Cleveland Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional finding and enters the following order:

1. Respondent Filtration Manufacturing, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Alabama with its office and principal place of business at 1110 Montlimar Place, Suite 290, Mobile, Alabama.

Respondent Gary L. Savell is the President, Chief Executive Officer, and an owner and director of the corporate respondent. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

Respondent Horace R. Allen is the Secretary, Treasurer, and an owner and director of the corporate respondent. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

Respondent Brandon R. Clausen is the Vice President, and an owner and director of the corporate respondent. He formulates, directs and controls the policies, acts and practices of said corporation, and his address is the same as that of said corporation.

2. The Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

DEFINITIONS

For the purposes of this order, the following definitions apply:

1. The term "*air cleaning product*" or "*product*" means any device, equipment or appliance designed or advertised to remove, treat or reduce the level of any contaminant(s) in the air.

2. The term "*contaminant(s)*" refers to one or more of the following: fungal (mold) spores, pollen, lint, tobacco smoke, household dust, animal dander or any other gaseous or particulate matter found in indoor air.

ORDER

I.

It is ordered, That respondents Filtration Manufacturing Inc., a corporation, its successors and assigns, and its officers, and Gary L. Savell, individually and as an officer of said corporation, Horace R. Allen, individually and as an officer of said corporation, and Brandon R. Clausen, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of the Allergy 2000 or any other air cleaning product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, in any manner, directly or by implication, regarding the performance, health or other benefits, or efficacy of such product, unless, at the time of making such representation, respondents possess and rely upon competent and

reliable evidence which, when appropriate, must be competent and reliable scientific evidence that substantiates such representation.

B. Making any representation, directly or by implication, that any air cleaning product will perform under any set of conditions, including household living conditions, unless at the time of making the representation(s) respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation(s) either by being related to those conditions or by having been extrapolated to those conditions by generally accepted procedures.

For purposes of this order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

II.

It is further ordered, That respondents Filtration Manufacturing, Inc., a corporation, its successors and assigns, and its officers, and Gary L. Savell, individually and as an officer of said corporation, Horace R. Allen, individually and as an officer of said corporation, and Brandon R. Clausen, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of the Allergy 2000 air cleaning product or any substantially similar product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from using the name "Allergy 2000" or any other trade name that represents, directly or by implication, that such product will relieve allergy symptoms unless, at the time of making the representation, respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation.

III.

It is further ordered, That, for five (5) years after the last date of dissemination of any representation covered by this order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers, and complaints or inquiries from governmental organizations.

IV.

It is further ordered, That respondent Filtration Manufacturing, Inc., its successors and assigns, shall:

A. Within thirty (30) days after the date of service of this order, provide a copy of this order to each of respondent's current principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order; and

B. For a period of ten (10) years from the date of service of this order, provide a copy of this order to each of respondent's principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order within three (3) days after the person assumes his or her position.

V.

It is further ordered, That respondents Gary L. Savell, Horace R. Allen and Brandon R. Clausen shall, for a period of ten (10) years from the date of service of this order, notify the Commission within thirty (30) days of the discontinuance of their present business or employment and of their affiliation with any new business or employment involving the manufacturing, labeling, advertising,

marketing, promotion, offering for sale, sale or distribution of any air filter or substantially similar device. Each notice of affiliation with any new business or employment shall include respondent's new business address and telephone number, current home address, and a statement describing the nature of the business or employment and his duties and responsibilities.

VI.

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporate respondent, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising under this order.

VII.

It is further ordered, That respondents shall, within sixty (60) days after service of this order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

VIII.

This order will terminate on January 6, 2017, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Complaint

123 F.T.C.

IN THE MATTER OF

AAF-McQUAY, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3703. Complaint, Jan. 6, 1997--Decision, Jan. 6, 1997*

This consent order prohibits, among other things, a Kentucky-based manufacturer of residential air filters from making any representation regarding the performance, health or other benefits, or efficacy of air cleaning products, unless the respondent possesses competent and reliable scientific evidence to substantiate such representations.

Appearances

For the Commission: *Brinley H. Williams* and *Michael Milgrom*.
For the respondent: *Dennis J. Reinhold*, Louisville, KY.

COMPLAINT

The Federal Trade Commission, having reason to believe that AAF-McQuay, Inc., d/b/a AAF International, a corporation, ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent AAF-McQuay, Inc., d/b/a AAF International, is a Delaware corporation with its principal office or place of business at 215 Central Avenue, Louisville, Kentucky.

PAR. 2. Respondent has manufactured, labeled, advertised, promoted, offered for sale, sold, and distributed air filters for use in residences under the brand names ElectroKlean and Dirt Demon.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for the ElectroKlean and Dirt Demon air filters, including but not necessarily

limited to the attached Exhibits A through E. These advertisements contain the following statements and depictions:

A. ElectroKlean ELECTROSTATIC Permanent Air Filter Eliminates 95% of Household Dust, Lint and Pollen

.....

Helps reduce sources of allergy problems by eliminating microscopic airborne particles, including pet dander. [Depiction of cat and dog]

Stops pollen, molds, dust and lint from recirculating through-out your home. [Depiction of flowers releasing pollen].

Special filter material is noticeably better than ordinary air filters in purifying the air you breathe. [Depiction of cigarette releasing smoke]

* * * *

Treated with EPA Registered Intersept Antimicrobial Special additive makes ElectroKlean superior to ordinary filters, helps to significantly improve indoor air quality. Inhibits growth of odor-causing bacteria, mold, mildew and other organisms that can quickly multiply in your heating and cooling system.

* * * *

Breathe cleaner air all the time with ElectroKlean. Eliminate 95% of household dust, lint and pollen.

* * * *

What is Intersept Antimicrobial?

The ElectroKlean Air Filter is treated with Intersept Antimicrobial, a special additive that inhibits the growth and build up of bacteria, mold, mildew and other organisms in your heating and cooling system. This means you're breathing cleaner and healthier air!

* * * *

I have allergies. Will this filter help?

It should. ElectroKlean removes most of the contaminants that aggravate your condition. It eliminates 95% of household dirt, lint, animal danders, pollen and other irritants.

* * * *

Is this filter considered an allergy relief aid?

It can be. Your doctor may actually prescribe a special home air filter to help eliminate the sources (dust, pollen, etc.) of your allergies. The purchase price of this filter may be tax deductible. (Exhibit A)

B. DIRT DEMON

High Efficiency Pleated Air Filter

6 TIMES BETTER THAN STANDARD AIR FILTERS REMOVES 95% OF HOUSEHOLD DIRT, DUST, POLLEN & LINT HELPS RELIEVE ALLERGY SYMPTOMS

* * * *

Stops pollen, molds, dust and lint from recirculating throughout your home. [Depiction of flowers releasing pollen]

* * * *

Special filter material and pleated design are noticeably better than ordinary air filters in purifying the air you breathe. [Depiction of cigarette releasing smoke] (Exhibit B)

C. ElectroKlean ELECTROSTATIC Permanent Air Filter

- Removes 95% of household dust, dirt, lint and pollen
- Inhibits growth of bacteria, molds and mildews that effect [sic] allergy sufferers (Exhibit C)

D. DIRT DEMON

HIGH EFFICIENCY PLEATED AIR FILTER

REMOVES 95% OF HOUSEHOLD DIRT, DUST, POLLEN & LINT.

HELPS RELIEVE ALLERGY SYMPTOMS (Exhibit D)

E. DIRT DEMON

High Efficiency Pleat with Intersept Extraordinary pleated design removes up to 95% of lint, dust and pollen passing through the filter. Keeps air throughout the house cleaner and easier to breathe in any season.

* * * *

Intersept Antimicrobial

Air filters can be a source of microbial contamination. American AirFilter products treated with Intersept will keep the filter from being a potential incubator of mold, mildew, fungi and bacteria. Intersept inhibits the growth of these microorganisms in the filter media, thereby removing it as a potential source of contamination.

* * * *

The filter effectively removes airborne dust mite allergens [Depiction of dust mite (magnified)]

Reduces pollen, molds, mildew, bacteria, fungi, dust and lint [Depiction of pollen grain (magnified)]

Helps reduce aggravating particles such as pet dander [Depiction of cat]

Special media is more effective in reducing pollutants in the air you breathe. [Depiction of cigarette smoker exhaling smoke] (Exhibit E)

PAR. 5. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through E, respondent has represented, directly or by implication, that:

A. Use of the ElectroKlean and Dirt Demon filters will substantially reduce the incidence of allergies caused by indoor allergens under household living conditions.

B. The ElectroKlean and Dirt Demon air filters remove 95 percent of airborne contaminants from the air that people breathe under household living conditions.

C. The Dirt Demon traps 95% of the lint, dust and pollen from the household air passing through it.

D. The Dirt Demon filter is six times as efficient at removing pollutants as a standard air filter.

E. The addition of Intersept antimicrobial to the ElectroKlean makes air cleaner and healthier than it would otherwise be under household living conditions.

F. The addition of Intersept antimicrobial to the ElectroKlean inhibits the growth of microbes in household heating and cooling systems.

G. The addition of Intersept antimicrobial to the Dirt Demon removes the filter as a potential source of contamination of household air.

PAR. 6. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A through E, respondent has represented, directly or by implication, that at the time it made the representations set forth in paragraph five, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 7. In truth and in fact, at the time it made the representations set forth in paragraph five, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. Through the use of the statements and depictions contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits B, D, and E, respondent has represented, directly or by implication, that the Dirt Demon is a HEPA (High Efficiency Particulate Air) filter.

PAR. 9. In truth and in fact the Dirt Demon is not a HEPA filter according to industry standards. Therefore, the representation set forth in paragraph eight was, and is, false and misleading.

PAR. 10. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

Complaint

123 F.T.C.

EXHIBIT A

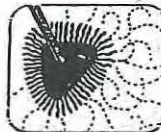
16 • 20 • 1

Actual Filter Size

5 7/8 in • 19 5/8 in • 7/8 in
33mm • 498mm • 22mm

ElectroKlean™ ELECTROSTATIC Permanent Air Filter

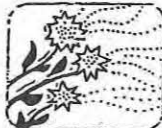
Eliminates 95% of Household
Dust, Lint and Pollen



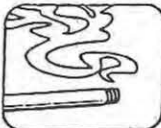
So effective that you
won't have to dust
as often.



Helps reduce sources
of allergy problems
by eliminating micro-
scopic airborne
particles, including
pet dander.



Stops pollen, molds,
dust and lint from
recirculating through-
out your home.



Special filter material
is noticeably better
than ordinary air
filters in purifying
the air you breathe.

Treated with EPA Registered Intersept® Antimicrobial

- Special additive makes ElectroKlean superior to ordinary air filters, helps to significantly improve indoor air quality.
- Inhibits growth of odor-causing bacteria, mold, mildew and other organisms that can quickly multiply in your heating and cooling system.
- Remains active over the life of the filter.

Intersept® is a registered trademark
of Interface, Inc.

American Air Filter
Snyder-Gamant

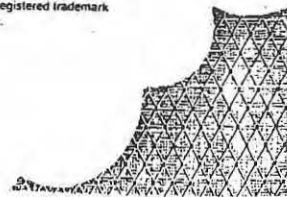


EXHIBIT A

ElectroKlean™ ELECTROSTATIC Permanent Air Filter

Breathe cleaner air all the time with ElectroKlean.
Eliminate 95% of household dust, lint and pollen.

Easy to Install and Maintain

Install your ElectroKlean as you would any filter.

- No electrical power required.
- Self generating electrostatic charge attracts dirt, dust, pollen, pet dander, molds and microscopic dust mites.



Remove and
rinse every 30
days. Let dry
before
reinstalling.



You have a
superior
cleaning filter
that maintain
the quality c
air you brea

Why do you say it is "Electrostatic"?

Have you ever noticed how dust seems to quickly build up on your television screen? That's because the screen has an electrostatic charge. The ElectroKlean Air Filter works the same way to actually attract dirt, dust and other pollutants.

What is Intercept® Antimicrobial?

The ElectroKlean Air Filter is treated with Intercept® Antimicrobial, a special additive that inhibits the growth and build up of bacteria, mold, mildew and other organisms in your heating and cooling system. This means you're breathing cleaner and healthier air!

I have allergies. Will this filter help?

It should. ElectroKlean removes most of the contaminants that aggravate your condition. It eliminates 95% of household dirt, lint, animal dander, pollen and other irritants. For best results, keep the heating/air conditioning fan running continuously.

What makes ElectroKlean such a good investment?

The ElectroKlean Electrostatic Air Filter will last for years, so the filter quickly pays for itself.

Is this an "environmentally friendly" product?

Yes. Because the ElectroKlean filter is not replaced, you won't be throwing it away, thereby filling up landfill space with discarded filters.

Is this filter considered an allergy relief aid?

It can be. Your doctor may actually prescribe a special home air filter to help eliminate the sources (dust, pollen, etc.) of your allergies. The purchase price of this filter may be tax deductible.

Will I have to dust less often?

Yes! With proper maintenance (cleaning about every 30 days), this filter will definitely cut down on the amount of dusting that your home requires.

LIMITED WARRANTY

For four (4) years from the date of original purchase, American General will, at no charge, replace a defective ElectroKlean® Electrostatic Air Filter® and the Air Filter is bound to be defective in design or workmanship, provided that the defective Air Filter is returned to American General with proof of purchase, and with proof of the defect.

THIS WARRANTY EXCLUDES MANUFACTURING DEFECTS ONLY AND DOES NOT COVER DAMAGE TO THE AIR FILTER DUE TO DAMAGE, IMPROPER INSTALLATION, MISUSE, ABUSE, OR FAILURE TO MAINTAIN THE AIR FILTER IN ACCORDANCE WITH THE INSTRUCTIONS ON THE BACK OF THE FILTER.

THIS IS AMERICAN GENERAL'S SOLE WARRANTY AND SHALL BE THE FULL EXTENT OF AMERICAN GENERAL'S LIABILITY. AMERICAN GENERAL SHALL NOT BE LIABLE FOR THE COST OF REMOVAL, REPAIR, OR REPLACEMENT OF THE FILTER, OR FOR ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF PROFITS OR BUSINESS. AMERICAN GENERAL MAKES NO OTHER WARRANTY OF ANY KIND, AND AMERICAN GENERAL MAKES NO OTHER CLAIMS OR WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE HEREBY DISCLAIMED BY AMERICAN GENERAL AND EXCLUDED FROM THIS WARRANTY.

Please call 1-800-451-1234 for more information on this warranty. A receipt acknowledgment is required on all returns.

American General Corporation, P.O. Box 1000, Louisville, KY 40201-1000

Made in America



Intercept® is a registered trademark of American General Corporation. All other trademarks are the property of their respective owners.

018-312-300

American Air Filter

American General Corporation 315 Central Avenue Louisville Kentucky

Complaint

123 F.T.C.

EXHIBIT B

← AIR DEMON

High Efficiency Pleated Air Filter

**6 TIMES BETTER THAN
STANDARD AIR FILTERS**

- REMOVES 95% OF HOUSEHOLD DIRT, DUST, POLLEN & LINT
- HELPS RELIEVE ALLERGY SYMPTOMS
- IMPROVES INDOOR AIR QUALITY
- CLEANS AIR UP TO 90 DAYS

Stops pollen, molds, dust and lint from recirculating throughout your home.

So effective that you won't have to dust as often.

Helps reduce sources of allergy problems by eliminating microscopic airborne particles, including pet dander.

Special filter material and pleated design are noticeably better than ordinary air filters in purifying the air you breathe.

American Air Filter
Snyder General

EXHIBIT B



High Efficiency Pleated Air Filter

*... From
The World Leader in Clean Air Technology.*

- Hospitals, industrial plants, "cleanroom" environments, and nuclear installations all rely on AAF products.
- AAF systems have even been used in NASA space modules!
- AmericanAirFilter products have been made since 1925, and pleated filters for commercial and industrial facilities for more than 40 years.

Now, this technological expertise is available to clean the air you breathe in your home.

- Six times better than standard air filters.
- Cleans air up to 90 days (How often the Dirt Demon should be replaced depends on such things as how long the fan runs and windows are left open, and the amount of carpeting in your home.)
- UL Classified for safety.
- Made in the USA.

AmericanAirFilter
SnyderGeneral

EXHIBIT B Page 2 of 2

123 F.T.C.

Complaint

EXHIBIT C



ElectroKlean™ ELECTROSTATIC Permanent Air Filter

- Removes 95% of household dust, dirt, lint and pollen
- Inhibits growth of bacteria, molds and mildews that effect allergy sufferers
- Long term value... rinse and reuse instead of replacing every month

ex.c



HIGH EFFICIENCY PLEATED AIR FILTER

REMOVES 95% OF HOUSEHOLD DIRT, DUST, POLLEN & LINT

HELPS RELIEVE ALLERGY SYMPTOMS

BREATHE CLEANER AIR!

American Air Filter
A Snyder General

Product of AAF-McQuay, Inc. 300 E. 1st St. St. Louis, Mo. 63102-3550

Complaint

123 F.T.C.

EXHIBIT E

AmericanAirFilter

High Efficiency Pleat

with Intersept®



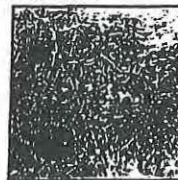
Extraordinary pleated design removes up to 95% of lint, dust and pollen passing through the filter. Keeps air throughout the house cleaner and easier to breathe in any season†.

Treated with Intersept®



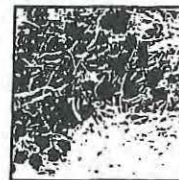
High efficiency pleated filter treated with Intersept® antimicrobial.

Untreated



Microscopic view of untreated filter with Gram-negative bacteria growth. (*Serratia marcescens*)

Untreated



Microscopic view of untreated filter with fungal growth. (*Aspergillus niger*)

Intersept® antimicrobial

Air filters can be a source of microbial contamination. AmericanAirFilter products treated with Intersept will keep the filter from being a potential incubator of mold, mildew, fungi and bacteria. Intersept inhibits the growth of these microorganisms in the filter media, thereby removing it as a potential source of contamination.

Low maintenance

Easy to install, lasts up to 90 days, then disposes easily. Helps heating/cooling system operate more efficiently.

Replace filter every 90 days

(Cured)

EXHIBIT E

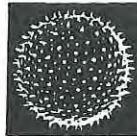
High Efficiency Pleat with Intersept®

AmericanAirFilter

America's #1 selling line of residential air filters.



The filter effectively removes airborne dust mite allergens.



Reduces pollen, mold, mildew, bacteria, fungi, dust and lint.



Helps reduce aggravating particles such as pet dander.



Special media is more effective in reducing pollutants in the air you breathe.

Improve Your "Indoor Air Quality"

Pleated design with larger surface area cleans air more thoroughly than standard flat filters.

Call 1-800-927-6789 to receive your free informative brochure, "How to Improve Your Indoor Air Quality."

ElectroKlean with Intersept

Best

Polynomial filter. Wash, rinse and reuse.

Pleated with Intersept

Better

Replace every 90 days.

AAF with Intersept

Good

Replace every 60 days.

AAF

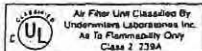
Standard

Replace every 30 days.

A Complete Line of Air Filters

From Standard to ElectroKlean™, AmericanAirFilter has just what you need.

†For best results, keep the heating/air conditioning fan running continuously.
*Based on arrestance, ASHRAE standard 52.1-1992



AmericanAirFilter™

High Efficiency Pleat with Intersept®

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of respondent, AAF-McQuay, Inc., and the respondent having been furnished thereafter with a copy of a draft of the complaint which the Cleveland Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, its attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional finding and enters the following order:

1. AAF-McQuay, Inc., d/b/a AAF International, is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its office and principal place of business at 215 Central Avenue, Louisville, Kentucky.

2. The Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and proceeding is in the public interest.

DEFINITIONS

For the purposes of this order, the following definitions apply:

1. The term "*air cleaning product*" or "*product*" means any device, equipment or appliance designed or advertised to remove, treat or reduce the level of any contaminant(s) in the air.

2. The term "*contaminant(s)*" refers to one or more of the following: fungal (mold) spores, pollen, lint, tobacco smoke, household dust, animal dander or any other gaseous or particulate matter found in indoor air.

ORDER

I.

It is ordered, That respondent AAF-McQuay, Inc., d/b/a AAF International, a corporation, its successors and assigns, and its officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of any air cleaning product in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, in any manner, directly or by implication, regarding the performance, health or other benefits, or efficacy of such product, unless at the time of making such representation, respondent possesses and relies upon competent and reliable evidence, which, when appropriate, must be competent and reliable scientific evidence, that substantiates such representation.

B. Making any representation, directly or by implication, that any air cleaning product will perform under any set of conditions, including household living conditions, unless at the time of making the representation(s) respondent possesses and relies upon competent and reliable scientific evidence that substantiates such representation(s) either by being related to those conditions or by having been extrapolated to those conditions by generally accepted procedures.

For purposes of this order, "competent and reliable scientific evidence" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that have been conducted and evaluated in an objective manner by

persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

II.

It is further ordered, That respondent AAF-McQuay, Inc., d/b/a AAF International, a corporation, its successors and assigns, and its officers, agents, representatives and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale or distribution of the Dirt Demon, the ElectroKlean, or any other air filter for insertion into household central heating and/or cooling systems, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from misrepresenting, directly or by implication that such filter is a HEPA (High Efficiency Particulate Air) filter.

III.

It is further ordered, That, for five (5) years after the last date of dissemination of any representation covered by this order, respondent, or its successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers, and complaints or inquiries from governmental organizations.

IV.

It is further ordered, That respondent AAF-McQuay, Inc., d/b/a AAF International, its successors and assigns, shall:

A. Within thirty (30) days after the date of service of this order, provide a copy of this order to each of respondent's current principals,

officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order; and

B. For a period of ten (10) years from the date of service of this order, provide a copy of this order to each of respondent's principals, officers, directors, and managers, and to all personnel, agents, and representatives having sales, advertising, or policy responsibility with respect to the subject matter of this order within three (3) days after the person assumes his or her position.

V.

It is further ordered, That respondent shall notify the Commission at least thirty (30) days prior to any proposed change, such as dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations arising under this order.

VI.

It is further ordered, That respondent shall, within sixty (60) days after service of this order, and at such other times as the Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which it has complied with this order.

VII.

This order will terminate on January 6, 2017, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN THE MATTER OF

THE PENN TRAFFIC COMPANY

MODIFYING ORDER IN REGARD TO ALLEGED VIOLATION OF
SEC. 7 OF CLAYTON ACT AND SEC. 5 OF THE
FEDERAL TRADE COMMISSION ACT

Docket C-3577. Consent Order, May 15, 1995--Modifying Order, Jan. 10, 1997

This order reopens a 1995 consent order -- that required the respondent to divest one supermarket in each of the three Pennsylvania areas designated -- and this order modifies the consent order by terminating the respondent's obligation to divest one of its two supermarkets in Mount Carmel, Pennsylvania, in part, because Penn Traffic has demonstrated that new entrants into the Mount Carmel market has eliminated the need for the divestiture.

ORDER REOPENING AND MODIFYING ORDER

On September 13, 1996, respondent The Penn Traffic Company ("Penn Traffic") filed a Petition of Respondent the Penn Traffic Company to Reopen and Set Aside the Provisions of Paragraph II.A.3 of the Order Entered Herein ("Petition"). In its Petition, Penn Traffic requests that the Commission reopen the order in Docket No. C-3577 ("order") to set aside paragraph II.A.3 which requires Penn Traffic to divest either one of two supermarkets it owns in Mt. Carmel, Pennsylvania. The Petition addresses the remaining one of three supermarket divestitures required by the order. The Commission previously approved Penn Traffic's application for divestiture of the other two supermarkets on June 17, 1996.¹

For the reasons discussed below, the Commission has determined that Penn Traffic has demonstrated changed conditions of fact sufficient to require the reopening and modification of the order.

I. THE PETITION

In its Petition,² Penn Traffic requests that the Commission modify the order to eliminate the remaining required divestiture under the

¹ Penn Traffic completed the sale of the assets of the supermarket in Towanda, Pennsylvania on July 2, 1996 (required pursuant to ¶ II.A.1 of the order), and completed the sale of the supermarket in Pittston, Pennsylvania on July 5, 1996 (required pursuant to ¶ II.A.2 of the order).

² In support of its Petition, Penn Traffic provided the affidavit of Robert G. Coleman, Director of Real Estate for the Riverside Division of the Penn Traffic Company ("Coleman Affidavit").

order--*i.e.* a supermarket divestiture in Mt. Carmel.³ Penn Traffic bases its Petition on changed conditions of fact and public interest considerations.⁴ The changes of fact alleged by Penn Traffic include the actual entry into the Mt. Carmel market of a Sav-A-Lot store and the prospective entry (in March 1997) of a Wal-Mart Supercenter (featuring a large supermarket), just outside the Mt. Carmel Township limits. At the time the order became final (May 22, 1995), Sav-A-Lot had not opened its store and Wal-Mart had not announced its decision to build a Supercenter near Mt. Carmel.

In addition to change of fact, Penn Traffic argues that it is in the public interest to grant its Petition, because a further divestiture would, in effect, force Penn Traffic to exit the local Mt. Carmel market. Penn Traffic alleges that the above-described changes in the competitive conditions have contributed to its inability to effect a divestiture in Mt. Carmel. According to Penn Traffic, these conditions have eroded the marketability and long-term viability of its smaller Mt. Carmel supermarket location for use as a supermarket. Therefore, Penn Traffic states that if required to divest in Mt. Carmel, it will attempt to sell its larger supermarket and then close the smaller supermarket, thereby exiting the local Mt. Carmel market.⁵

II. STANDARD FOR REOPENING AND MODIFYING FINAL ORDERS

Section 5(b) of the Federal Trade Commission Act provides that the Commission shall reopen an order to consider whether it should be modified if the respondent "makes a satisfactory showing that changed conditions of law or fact" so require. A satisfactory showing sufficient to require reopening is made when a request to reopen identifies significant changes in circumstances and shows that the changes eliminate the need for the order or make continued application of it inequitable or harmful to competition. S. Rep. No. 96-500, 96th Cong., 2d Sess. 9 (1979) (significant changes or changes causing unfair disadvantage); Louisiana-Pacific Corp., Docket No. C-

³ Order, ¶ II.A.3.

⁴ Penn Traffic does not assert that any change of law requires reopening the order.

⁵ Petition at pp. 11-13. Coleman Affidavit at ¶¶ 8-9, 22-24.

2956, Letter to John C. Hart (June 5, 1986), at 4 (unpublished) ("Hart Letter").⁶

Section 5(b) also provides that the Commission may modify an order when, although changed circumstances would not require reopening, the Commission determines that the public interest so requires. Respondents are therefore invited in petitions to reopen to show how the public interest warrants the requested modification.⁷ In such a case, the respondent must demonstrate as a threshold matter some affirmative need to modify the order.⁸ For example, it may be in the public interest to modify an order "to relieve any impediment to effective competition that may result from the order."⁹ Once such a showing of need is made, the Commission will balance the reasons favoring the requested modification against any reasons not to make the modification.¹⁰ The Commission also will consider whether the particular modification sought is appropriate to remedy the identified harm.¹¹

The language of Section 5(b) plainly anticipates that the burden is on the petitioner to make a "satisfactory showing" of changed conditions to obtain reopening of the order. The legislative history also makes clear that the petitioner has the burden of showing, other than by conclusory statements, why an order should be modified. The Commission "may properly decline to reopen an order if a request is merely conclusory or otherwise fails to set forth specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions require the requested modification of the order." S. Rep. No. 96-500, 96th Cong., 1st Sess. 9-10 (1979); *see also* Rule 2.51(b) (requiring affidavits in support of petitions to reopen and modify). If the Commission determines that the petitioner has made the necessary showing, the Commission must reopen the order to consider whether modification is required and, if so, the nature and extent of the modification. The Commission is not

⁶ *See also United States v. Louisiana-Pacific Corp.*, 967 F.2d 1372, 1376-77 (9th Cir. 1992) ("A decision to reopen does not necessarily entail a decision to modify the order. Reopening may occur even where the petition itself does not plead facts requiring modification.").

⁷ Hart Letter at 5; 16 CFR 2.51.

⁸ *Damon Corp.*, Docket No. C-2916, Letter to Joel E. Hoffman, Esq. (March 29, 1983), at 2 ("Damon Letter"), *reprinted in* [1979-1983 Transfer Binder] Trade Reg. Rep. (CCH) ¶ 22,207.

⁹ *Damon Corp.*, Docket No. C-2916, 101 FTC 689, 692 (1983).

¹⁰ Damon Letter at 2.

¹¹ Damon Letter at 4.

required to reopen the order, however, if the petitioner fails to meet its burden of making the satisfactory showing required by the statute. The petitioner's burden is not a light one in view of the public interest in repose and the finality of Commission orders. *See Federated Department Stores, Inc. v. Moitie*, 425 U.S. 394 (1981) (strong public interest considerations support repose and finality).

III. PENN TRAFFIC HAS DEMONSTRATED CHANGED CONDITIONS OF
FACT THAT REQUIRE THE REOPENING AND
MODIFICATION OF THE ORDER

Penn Traffic's Petition demonstrates that new entry into the relevant market eliminates the need for a divestiture pursuant to paragraph II.A.3 of the order. The Petition does not contain sufficient information for the Commission to conclude that the Sav-A-Lot is a "supermarket," as defined by the order, and is, thereby, in the relevant product market.¹² However, the Wal-Mart Supercenter will feature a full-line supermarket of at least 40,000 square-feet¹³ (larger than either of Penn Traffic's two Mt. Carmel supermarkets)¹⁴ and is, thus, in the relevant product market.¹⁵

This Supercenter will be located approximately one mile from the city limits of Mt. Carmel, the geographic market identified in the complaint,¹⁶ and less than two miles from either of Penn Traffic's two Mt. Carmel supermarkets.¹⁷ The Supercenter location is in a relatively undeveloped area between Mt. Carmel and Shamokin and is easily accessible by car from both of these more developed population centers. Such a sizable, well-recognized entrant, in this semi-rural area, where most supermarket shopping is done by car, will draw customers from a broader geographic region than is identified in the

¹² Although Sav-A-Lot offers many items sold through supermarkets, Penn Traffic has not demonstrated that the Sav-A-Lot carries all relevant product categories identified in paragraph I.D of the order as defining a "supermarket," e.g. fresh meat, nor that the Sav-A-Lot carries the variety of brands and sizes within a category that would be found in Penn Traffic's comparable supermarkets.

¹³ Wal-Mart sources estimate the grocery and grocery-related product area of this Supercenter to be between 40,000 and 60,000 square feet.

¹⁴ Penn Traffic operates one 29,000 square foot supermarket and one 25,000 square foot supermarket in Mt. Carmel.

¹⁵ The Supercenter, currently under construction, will have a total of 186,000 square feet.

¹⁶ Paragraph 7(b) of the complaint in this matter identifies the Mount Carmel, Pennsylvania area to include "the Borough of Mount Carmel and the Township of Mount Carmel."

¹⁷ Prior to the opening of the Supercenter, the nearest supermarkets to Penn Traffic's Mt. Carmel supermarkets are in Shamokin, Pennsylvania, eight miles east of Mt. Carmel.

complaint.¹⁸ Therefore, unlike the competitive conditions that existed when the order became final, supermarket competition will expand outside the Mt. Carmel Township limits to include the Supercenter.

Further, Penn Traffic has responded to these anticipated competitive changes by initiating plans to expand (to about 40,000 square feet) and improve the larger of its Mt. Carmel supermarkets.¹⁹ Accordingly, when the Wal-Mart Supercenter opens, it appears certain that it will be in direct competition with Penn Traffic's supermarkets in Mt. Carmel.

Given the sales volume that can reasonably be expected to be generated from the residents of Mt. Carmel,²⁰ the additional competition from a large competitor, such as Wal-Mart, is sufficient to remedy the competitive concerns that the order is designed to address.²¹ Therefore, the imminent entry of the Wal-Mart Supercenter constitutes a change of fact that eliminates the need for Penn Traffic to divest a supermarket in Mt. Carmel and requires the reopening and modification of the order to set aside paragraph II.A.3 which requires such a divestiture.

Because the Commission has determined to grant Penn Traffic's Petition based on change of fact, we do not reach a determination with respect to Penn Traffic's public interest arguments.

Accordingly, *It is ordered*, That this matter be, and it hereby is, reopened and that the Commission's order be, and it hereby is, modified to set aside paragraph II.A.3, as of the effective date of this order.

¹⁸ In addition, Wal-Mart's general merchandise product selection further increases its potential drawing power from these areas.

¹⁹ Coleman Affidavit at ¶¶ 27-28.

²⁰ Studies conducted by Penn Traffic estimate the total weekly potential food store sales from Mt. Carmel, Atlas, and Kulpmont boroughs, and Mt. Carmel Township in Pennsylvania to be \$361,000. Coleman Affidavit at ¶ 12.

²¹ Penn Traffic estimates that the Supercenter may succeed in taking approximately \$150,000 in weekly sales, or about 41.5% of the total potential sales (of \$361,000) from the Mt. Carmel trade area identified in the Coleman Affidavit ¶ 12. Coleman Affidavit ¶ 19.

Complaint

123 F.T.C.

IN THE MATTER OF

MONTANA ASSOCIATED PHYSICIANS, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3704. Complaint, Jan. 13, 1997--Decision, Jan. 13, 1997*

This consent order prohibits, among other things, two Montana-based organizations from entering or attempting to enter into any agreement with physicians to: negotiate or refuse to deal with any third-party payer; determine the terms on which physicians deal with such payers; or fix the fees charged for any physician's services. In addition, the consent order prohibits the respondents from advising physicians to raise, maintain or adjust the fees charged for their medical services, or encouraging adherence to any fee schedule for physician's services.

Appearances

For the Commission: *Robert Leibenluft, Steve Osnowitz and William Baer.*

For the respondents: *James Kirkland, Mintz, Levin, Cohn, Ferris, Glovsky & Popeo, Washington, D.C. and James Sneed, McDermott, Will & Emery, Washington, D.C.*

COMPLAINT

Pursuant to the provisions of the Federal Trade Commission Act, as amended, and by virtue of the authority vested in it by said Act, the Federal Trade Commission, having reason to believe that the Montana Associated Physicians, Inc. ("MAPI") and the Billings Physician Hospital Alliance, Inc. ("BPHA"), hereinafter sometimes referred to as respondents, have violated and are violating the provisions of said Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, hereby issues its complaint stating its charges in that respect as follows:

PARAGRAPH 1. Respondent MAPI is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Montana, with its office and principal place of business located at 1242 North 28th Street, Suite 1A, Billings, Montana.

PAR. 2. There are approximately 115 shareholders of MAPI, all of whom are physicians, and they constitute the membership of MAPI. MAPI's members provide medical services in over 30 independent physician practices in Billings, Montana. MAPI's members constitute approximately 43 percent of all physicians in Billings, Montana, and primarily practice fee-for-service medicine. An approximately equal number of the other physicians in Billings are part of a single multispecialty physician practice. MAPI's members constitute over 80 percent of all "independent" Billings physicians, that is, those who are not part of the multispecialty physician practice or employed by a hospital. A significant portion of MAPI's activities furthers the pecuniary interests of its members.

PAR. 3. Respondent BPHA is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Montana, with its office and principal place of business located at 1233 North 30th Street, Billings, Montana.

PAR. 4. BPHA is a physician-hospital organization, whose membership consists of Saint Vincent Hospital and Health Center ("Saint Vincent") of Billings, Montana, and a majority of the physicians on Saint Vincent's active medical staff. Almost all of MAPI's members are also physician members of BPHA. BPHA contracts with third-party payers on behalf of its members to provide services to third-party payers' subscribers and enrollees. There are approximately 126 physician members of BPHA, practicing in over 30 independent physician practices, located almost exclusively in Billings, Montana. Physician members of BPHA constitute approximately 45 percent of all physicians in Billings, Montana, and over 80 percent of all independent Billings physicians. The single multispecialty physician practice, referred to in paragraph two, was acquired by the only other hospital in Billings, and has approximately the same number of physicians as BPHA. A significant portion of BPHA's activities furthers the pecuniary interests of its members.

PAR. 5. The general business practices of MAPI, BPHA, and their members, including those herein alleged, are in or affect "commerce" as defined in the Federal Trade Commission Act, as amended, 15 U.S.C. 45.

PAR. 6. Except to the extent that competition has been restrained as alleged herein, the physician members of MAPI and BPHA have been, and are now, in competition among themselves and with other providers of physician services in Billings, Montana.

PAR. 7. Physicians, including the physician members of MAPI and BPHA, are often paid directly or indirectly for their services by third-party payers. Third-party payers such as health insurance companies, preferred provider organizations ("PPOs"), and health maintenance organizations ("HMOs"), reimburse for, purchase, or pay for all or part of the health care services provided to their enrollees or subscribers. Third-party payers generally contract with physicians to become participating providers in plans such payers offer to consumers. These contracts establish the terms and conditions of the relationship between the physician and the third-party payer, including the fees to be paid the physician for treating subscribers or enrollees of the third-party payer. Through such contracts, third-party payers may obtain capitated payment systems or discounts from physicians' usual fees, and physicians may obtain access to additional patients.

PAR. 8. Third-party payers in Billings, Montana, compete with each other on the basis of price, coverage offered, physician and hospital quality and availability, and other factors that are important to consumers. Payments to physicians for services rendered to third-party payer subscribers are a large component of a third-party payer's costs, and, therefore, are significant to a third-party payer in determining the price to charge consumers for health care coverage.

PAR. 9. Absent agreements among competing physicians on the terms, including price, on which they will provide services to subscribers or enrollees in health care plans offered or provided by third-party payers, competing physicians decide individually whether to enter into contracts with third-party payers to provide services to subscribers or enrollees, and what prices to charge pursuant to such contracts.

PAR. 10. In 1986, most of the independent physicians in Billings were members of an organization called Ultracare. At this time, there were no HMOs or PPOs operating in Billings. Ultracare concluded that such plans would soon attempt to contract with physicians in Billings, and that competitive pressure could force physicians to deal with such plans at reduced prices or on other than fee-for-service terms. Accordingly, in March 1987, physician members of Ultracare formed MAPI, in substantial part to be a vehicle for its members to deal collectively with managed care plans. The purpose of engaging in collective dealings was to obtain greater bargaining power with third-party payers by presenting a united front, and thereby to resist

competitive pressures to discount fees and to avoid accepting reimbursement on other than the traditional fee-for-service basis.

PAR. 11. Beginning in 1986, and continuing to the present, MAPI and MAPI's predecessor, Ultracare, have acted as a combination of their members, have combined with at least some of their members, and have acted to implement agreements among their members to restrain competition by, among other things, facilitating, entering into, and implementing agreements, express or implied, to delay entry of HMOs and PPOs into Billings, to engage in collective negotiations over terms and conditions of dealing with third-party payers, to have MAPI members refrain from negotiating directly with third-party payers or contracting on terms other than those endorsed by MAPI, and to resist cost containment measures of third-party payers.

PAR. 12. During 1987 and continuing into 1993, MAPI acted to prevent and delay HMO Montana, an HMO owned and operated by Blue Cross/Blue Shield of Montana, from successfully contracting with physicians in Billings. Beginning in 1987, Blue Cross/Blue Shield of Montana sought to enter into agreements with MAPI's members to participate in HMO Montana. MAPI, on behalf of its members collectively, negotiated with HMO Montana concerning the terms of physicians' contracts with HMO Montana, including price terms, and rejected all contracts proposed by HMO Montana. Members of MAPI told Blue Cross/Blue Shield of Montana that they would negotiate with HMO Montana only through MAPI, and no member of MAPI entered into a contract with HMO Montana.

PAR. 13. Beginning in 1987, MAPI gathered detailed fee information from individual competing MAPI physicians and their physician practices, which enabled MAPI to determine for most physician services the prevailing fees and the maximum reimbursement allowed by Blue Cross/Blue Shield of Montana. After collecting and analyzing this fee information, MAPI advised certain physicians to raise their fees, and some fees were increased in accordance with these recommendations.

PAR. 14. Beginning in 1988, MAPI acted to obstruct efforts by a health plan seeking to establish the first PPO program in Billings. The health plan entered into a PPO contract with Saint Vincent in November 1988 and then sought to contract with physicians on the hospital's medical staff. Some members of MAPI indicated to the plan that they would follow MAPI's recommendations in regard to dealings with the plan. MAPI, on behalf of its members collectively, offered its own proposed physician contract to the plan that provided

for physicians to be paid their usual fees with no discounts, represented to the plan that this was what MAPI's members would accept, and objected to any discounts in fees to be paid by MAPI members. After negotiating with MAPI for a year without MAPI ever agreeing to MAPI physicians charging less than their usual fees, the plan contacted individual physicians about signing a PPO contract. When the plan sought to collect current fee information from MAPI members in order to devise a proposed fee schedule to offer to physicians, MAPI urged its members to submit prices higher than they were currently charging in order to inflate the fee schedule. By June 1990, the plan had contracts with only about 30 percent of MAPI's members.

PAR. 15. MAPI was actively involved in the formation of BPHA, which was created in 1991 by Saint Vincent and physicians on its medical staff. A substantial majority of BPHA's physician members are also members of MAPI. Through BPHA's Physician Agreements, MAPI is designated as the agent of almost all MAPI physician members of BPHA with respect to their membership in BPHA. As a result, MAPI has the authority to elect and remove physician members of BPHA's Board of Directors. Until 1993, MAPI's agency authority extended to the acceptance or rejection of any contract negotiated by BPHA with any third-party payer.

PAR. 16. The physician members of BPHA, most of whom are MAPI members, concertedly control BPHA's pricing and other terms of contracts for physician services. BPHA's Bylaws designate that its Contracting Committee shall negotiate the terms and conditions of contracts for physician services with third-party payers, including price terms of those contracts, and recommend acceptance or rejection of said contracts to the members of BPHA. BPHA's Contracting Committee consists almost entirely of physicians and their employees and agents, including for a significant period of time the Executive Director of MAPI. No action of BPHA's Contracting Committee or BPHA's Board of Directors can be taken without the support of a majority of physician representatives on each body. BPHA did not enter into any contract for physician services until nearly two years after its creation.

PAR. 17. MAPI has combined and is combining with its physician members, and has acted and is acting to implement an agreement among them, to restrain competition among physicians, through an agreement, express or implied, that BPHA would negotiate the terms and conditions of agreements between BPHA

physician members and others, including the prices to be paid for their services.

PAR. 18. The physician members of MAPI and the physician members of BPHA have not integrated their practices in any economically significant way, nor have they created efficiencies sufficient to justify their acts or practices described in paragraphs ten through seventeen.

PAR. 19. By engaging in the acts or practices described above, both MAPI and BPHA have combined or conspired with their respective physician members to fix and/or increase the fees received from third-party payers for the provision of physician services, to conduct boycotts, or otherwise to restrain competition among physicians in Billings, Montana.

PAR. 20. The actions of the respondents described in this complaint have had and have the purpose, tendency, and capacity to result in the following effects, among others:

A. Restraining competition among physicians in Billings, Montana;

B. Fixing or increasing the prices that are paid for physician services in Billings, Montana; and

C. Depriving third-party payers, their subscribers, and patients of the benefits of competition among physicians in Billings, Montana.

PAR. 21. The combinations or conspiracies and the acts and practices described above constitute unfair methods of competition in violation of Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The acts and practices, as herein alleged, are continuing and will continue in the absence of the relief herein requested.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of a complaint which the Bureau of Competition proposed to present to the Commission for its consideration and which, if issued by the Commission would charge respondents with violation of the Federal Trade Commission Act; and

The respondents, their attorneys, and counsel for the Commission having thereafter executed an agreement containing a consent order,

an admission by the respondents of all of the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true, and waivers and other provisions as required by Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent MAPI is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Montana, with its office and principal place of business located at 1242 North 28th Street, Suite 1A, Billings, Montana.

2. Respondent BPHA is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Montana, with its office and principal place of business located at 1233 North 30th Street, Billings, Montana.

3. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

I.

It is ordered, That, for purposes of this order, the following definitions shall apply:

- A. "*Montana Associated Physicians, Inc.*" or "*MAPI*" means Montana Associated Physicians, Inc., its subsidiaries, divisions, committees, and groups and affiliates controlled by MAPI; their directors, officers, representatives, agents, and employees; and their successors and assigns.

B. "*Billings Physician Hospital Alliance, Inc.*" or "*BPHA*" means Billings Physician Hospital Alliance, Inc., its subsidiaries, divisions, committees, and groups and affiliates controlled by BPHA; their directors, officers, representatives, agents, and employees; and their successors and assigns.

C. "*Third-party payer*" means any person or entity that reimburses for, purchases, or pays for all or any part of the health care services provided to any other person, and includes, but is not limited to: health insurance companies; prepaid hospital, medical, or other health service plans, such as Blue Shield and Blue Cross plans; health maintenance organizations; preferred provider organizations; government health benefits programs; administrators of self-insured health benefits programs; and employers or other entities providing self-insured health benefits programs.

D. "*Risk-sharing joint venture*" means a joint arrangement to provide health care services in which physicians who would otherwise be competitors share a substantial risk of loss from their participation in the venture.

E. "*Fees*" means any and all cash or non-cash charges, rates, prices, benefits, or other compensation received, to be received, or charged to a patient or third-party payer for the rendering of physician services.

II.

It is further ordered, That MAPI, directly or indirectly, or through any corporate or other device, in connection with the provision of physician services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith shall cease and desist from entering into, attempting to enter into, organizing, attempting to organize, implementing, attempting to implement, continuing, attempting to continue, facilitating, attempting to facilitate, ratifying, or attempting to ratify any combination, contract, agreement, understanding, or conspiracy with or among any physician(s) to:

A. Negotiate, deal, or refuse to deal with any third-party payer, employer, hospital, or any other provider of health care services;

B. Determine the terms, conditions, requirements, or any other aspect of becoming or remaining a participating physician in any program or plan of any third-party payer; and

C. Fix, raise, stabilize, establish, maintain, adjust, or tamper with any fee, fee schedule, price, pricing formula, discount, conversion factor, or other aspect or term of the fees charged or the fees to be charged for any physician's services.

Provided that nothing in this order shall be construed to prohibit MAPI from forming, facilitating, or participating in the formation of a risk-sharing joint venture, which may deal with a third-party payer on collectively determined terms, as long as the physicians participating in the risk-sharing joint venture also remain free to deal individually with any third-party payer.

Further provided that nothing in this order shall be construed to prohibit MAPI from forming, facilitating, or participating in the formation of any other joint venture for which MAPI receives the prior approval of the Commission.

III.

It is further ordered, That MAPI, directly or indirectly, or through any corporate or other device, in connection with the provision of physician services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith shall cease and desist from:

A. Requesting, proposing, urging, advising, recommending, advocating, or attempting to persuade in any way any physician or physician's practice to fix, raise, stabilize, establish, maintain, adjust, or tamper with any fee, fee schedule, price, pricing formula, discount, conversion factor, or other aspect or term of the fees charged or the fees to be charged for any physician's services;

B. Creating, formulating, suggesting, encouraging adherence to, endorsing, or authorizing any list or schedule of fees for physicians' services, including, but not limited to, suggested fees, proposed fees, fee guidelines, discounts, discounted fees, standard fees, or recommended fees;

C. Encouraging, advising, pressuring, inducing, or attempting to induce any person to engage in any action prohibited by this order; and

IV.

It is further ordered, That BPHA, directly or indirectly, or through any corporate or other device, in connection with the provision of physician services in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, forthwith shall cease and desist from entering into, attempting to enter into, organizing, attempting to organize, implementing, attempting to implement, continuing, attempting to continue, facilitating, attempting to facilitate, ratifying, or attempting to ratify any combination, contract, agreement, understanding, or conspiracy with or among any physician(s) to:

A. Negotiate, deal, or refuse to deal with any third-party payer for physician services;

B. Determine the terms, conditions, requirements, or any other aspect of becoming or remaining a participating physician in any program or plan of any third-party payer; and

C. Fix, raise, stabilize, establish, maintain, adjust, or tamper with any fee, fee schedule, price, pricing formula, discount, conversion factor, or other aspect or term of the fees charged or the fees to be charged for any physician's services.

Provided that nothing in this order shall be construed to prohibit BPHA from forming, facilitating, or participating in the formation of a risk-sharing joint venture, which may deal with a third-party payer on collectively determined terms, as long as the physicians participating in the risk-sharing joint venture also remain free to deal individually with any third-party payer.

Further provided that nothing in this order shall be construed to prohibit BPHA from forming, facilitating, or participating in the formation of any other joint venture for which BPHA receives the prior approval of the Commission.

Further provided that nothing in this order shall be construed to prohibit BPHA from implementing, attempting to implement, continuing, or attempting to continue, for the express term thereof, contracts with third-party payers that were in effect on September 30, 1994.

Further provided that nothing in this order shall be construed to prohibit BPHA from continuing to function as a physician-hospital

organization that is not a risk-sharing or otherwise integrated entity, as long as each of the following conditions is met:

(a) Saint Vincent Hospital and Health Center is the only hospital in Yellowstone County, Montana, that participates in BPHA;

(b) BPHA's role in the contracting process between third-party payers and physician members of BPHA is limited to:

(i) Soliciting or receiving from an individual physician member of BPHA, and conveying to a third-party payer, information relating to fees or other aspects of reimbursement, outcomes data, practice parameters, utilization patterns, credentials, and qualifications;

(ii) Conveying to a physician member of BPHA any contract offer made by a third-party payer;

(iii) Soliciting or receiving from a third-party payer, and conveying to a physician member of BPHA, clarifications of proposed contract terms;

(iv) Providing to a physician member of BPHA objective information about proposed contract terms, including comparisons with terms offered by other third-party payers;

(v) Conveying to a physician member of BPHA any response made by a third-party payer to information conveyed, or clarifications sought, by BPHA;

(vi) Conveying, in individual or aggregate form, to a third-party payer, the acceptance or rejection by a physician member of BPHA of any contract offer made by such third-party payer; and

(vii) At the request of a third-party payer, providing the individual response, information, or views of each physician member of BPHA concerning any contract offer made by such third-party payer.

(c) Each physician member of BPHA makes an independent, unilateral decision to accept or reject each contract offer made by a third-party payer;

(d) BPHA does not: (i) disseminate to any physician another physician's fees, other aspects of reimbursement, or views or intentions as to possible terms of dealing with a third-party payer; (ii) act as an agent for the collective negotiation or agreement by the physician members of BPHA; or (iii) encourage or facilitate collusive behavior among physician members of BPHA; and

(e) Each physician member of BPHA remains free to deal individually with any third-party payer.

V.

It is further ordered, That MAPI and BPHA shall:

A. Within thirty (30) days after the date on which this order becomes final, distribute by first-class mail a copy of this order and the accompanying complaint to each of their members, officers, directors, managers, and employees;

B. For a period of five (5) years after the date this order becomes final, distribute by first-class mail a copy of this order and the accompanying complaint to each new MAPI or BPHA member, officer, director, manager, and employee within thirty (30) days of their admission, election, appointment, or employment; and

C. For a period of five (5) years after the date this order becomes final, publish annually in an official annual report or newsletter sent to all members, a copy of this order and the accompanying complaint with such prominence therein as is given to regularly featured articles.

VI.

It is furthered ordered, That MAPI and BPHA shall each file a verified written report within sixty (60) days after the date this order becomes final, annually thereafter for five (5) years on the anniversary of the date this order became final, and at such other times as the Commission or its staff may by written notice require, setting forth in detail the manner and form in which they have complied and are complying with the order.

VII.

It is further ordered, That MAPI and BPHA shall:

A. Notify the Commission at least thirty (30) days prior to any proposed change in such corporate respondent such as dissolution, assignment, sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in such corporation that may affect compliance obligations arising out of the order; and

B. For a period of five (5) years after the date this order becomes final, notify the Commission in writing forty-five (45) days prior to

forming or participating in the formation of, or joining or participating in, any risk-sharing joint venture.

VIII.

It is further ordered, That, for the purpose of determining or securing compliance with this order, MAPI and BPHA shall permit any duly authorized representative of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, calendars, and other records and documents in the possession or under the control of a respondent relating to any matters contained in this order; and

B. Upon five days' notice to a respondent and without restraint or interference from it, to interview officers, directors, or employees of a respondent.

IX.

It is further ordered, That this order shall terminate on January 13, 2017.

CONCURRING STATEMENT OF COMMISSIONER MARY L. AZCUENAGA

I concur in the decision to issue the complaint and order and write separately to emphasize two points. First, the complaint and order do not directly challenge the organization and conduct of the Billings Physician Hospital Alliance, Inc., as a physician hospital organization ("PHO"), and in my view, this order should cast no shadow on the activities of PHO's. Second, although I concur in the unusual and complicated fencing-in relief in the particular circumstances of this case, in my view, this negotiated order is not, and should not be read as, a guide for what a PHO can and cannot do.

IN THE MATTER OF

COMPUTER BUSINESS SERVICES, INC., ET AL.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SEC. 5 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3705. Complaint, Jan. 21, 1997--Decision, Jan. 21, 1997*

This consent order prohibits, among other things, an Indiana home-based computer business opportunity firm and three principals from misrepresenting the earnings or success rate of investors; the existence of a market for their products or services; the amount of time it would take investors to recoup their investments and from making any representation regarding the performance, benefits, efficacy or success rate of any product or service unless they possess reliable evidence to substantiate the claims. The consent order also prohibits the use of misleading testimonials or endorsements. In addition, the consent order requires that advertisements for automatic telephone dialing systems disclose federal restrictions on their use and requires the respondents to pay \$5 million in consumer redress.

Appearances

For the Commission: *C. Steven Baker, Catherine Fuller, Mary E. Tortorice and Evan Siegel.*

For the respondents: *Lewis Keiler, Sonnenschein, Nath & Rosenthal, Chicago, IL.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Computer Business Services, Inc. ("CBSI"); Andrew L. Douglass, individually and as an officer of CBSI; Matthew R. Douglass, individually; and Peter B. Douglass, individually ("respondents"), have violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that this proceeding is in the public interest, alleges:

1. Respondent CBSI is an Indiana Corporation with its principal place of business at CBSI Plaza, Sheridan, Indiana.
2. Respondent Andrew L. Douglass is an officer of CBSI. Individually or in concert with others, he formulates, directs, controls, or participates in the policies, acts, or practices of the corporation,

including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of CBSI.

3. Respondent Matthew R. Douglass is a supervisory employee of CBSI. Individually or in concert with others, he formulates, directs, controls, or participates in the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of CBSI.

4. Respondent Peter B. Douglass is a supervisory employee of CBSI. Individually or in concert with others, he formulates, directs, controls, or participates in the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of CBSI.

5. Respondents have advertised, offered for sale, sold, and distributed to the public home-based business ventures. Prospective consumers who purchase home-based business ventures from CBSI come to be known by the company as "Center Owners." A "center" ordinarily consists of computer hardware, software, training manuals, marketing materials, and available technical assistance which, together, are represented to enable the owner to create products and services that can be resold profitably to the general public.

6. Beginning no later than April 1988, and continuing through the present, respondents have disseminated or have caused to be disseminated magazine, newspaper and postcard advertisements, including but not necessarily limited to the attached Exhibit A, to induce consumers nationwide to call a toll-free number to order a free information kit. Respondents represent through these advertisements that consumers can expect to earn \$4,000 per month using CBSI's "proven turnkey business." Exhibit A.

7. Respondents have also disseminated or have caused to be disseminated advertisements for their home-based business ventures through commercial online services, including, but not limited to, CompuServe and America Online. Respondents represent through these advertisements that consumers can expect to earn \$4,000 per month through CBSI's home-based business ventures. Exhibit B.

8. Respondents have disseminated or have caused to be disseminated several information packets containing brochures and an audio cassette tape recording by the co-founders of CBSI, George and Jeanette Douglass. These materials, which are sent to prospective purchasers of home-based business ventures, contain the following statements:

(a) In the last 13 years, we've identified over 30 needs and wants. Each one of them is easy to run, helps other people, and provides you a good profit. Computer Business Services has not only identified these 30 needs, but has developed the technology to perform these services easily and profitably. Along with the technology, we've developed all the strategies to perform these services, plus the ways to find the people that need these services, and you can do it all from your home.

(b) Most of the couples and individuals that we've helped start their business have been extremely successful. . . .

(c) Each one of the programs I'm about to explain to you provides a needed service to the people or organizations in your community. Each service adds value to the people's lives you serve, and you can be proud to provide these services. Each program is a proven money-maker, and is now being operated successfully by our present center owners.

(d) Once you start to advertise your CBSI center, people know about it immediately and start coming to you for your services. Every business or organization needs to contact people and you have the only way to contact people quickly, inexpensively and effectively. Once this word gets out, you'll have to expand your services very rapidly, just as we did.

(e) Now we've already helped thousands of couples and individuals turn into successful business people, and we believe we can help you, too.

(f) If you get our CBSI computer program and follow our proven strategies, I really don't believe that you can do it badly enough not to be successful. Once you get the word out that you've got these programs available, people will come to you.

(g) We right now have 30 services you can perform. We have thousands of center owners already earning good money, and I believe you can, too.

(h) Now you have 24 hours in a day. You work 8, sleep 8, and have 8 free hours. If you take 8 free hours times 7 days a week, you have 56 hours. Divide that by two, and you have 28 hours that you can use in this business. Now I realize I've not included weekends. If you use 28 hours per week to do this program, you will be extremely successful.

(i) I can't guarantee your success. I can't guarantee that you'll make \$4,000 to \$10,000 a month. I don't know what's inside of you. But I do know this. Our services are needed in every community in the United States. Our programs really work, and you can earn more money than you ever dreamed possible if you will work our programs.

(j) Most of the couples and individuals that we've helped start their business have been extremely successful and our relationship with them has been exhilarating.

(k) This is a business that you can build a few customers at a time and reap the profits for a long time to come. I call it stack up income. You set it up once and get paid for it every month. So after a few years, you have big money coming in every month, even if you take a month off.

(l) Each of these services is a proven money-maker in large cities, small towns and rural communities throughout the country.

(m) Now some of our center owners use the computer dialing equipment for telemarketing on the unattended mode. Some just don't like to use the computer for telemarketing at all, and in some states, there are regulations that limit the use in the unattended mode. . . . Again, you must make the decision how you use your

equipment. Some center owners do very well using their computer dialing equipment for finding people who want their products. Others use the unattended mode to find qualified prospects for insurance, real estate, chimney cleaning and so forth. If they call from 9:00 a.m. to 9:00 p.m., they usually can call around 1,000 people a day.

9. Respondents also have disseminated or have caused to be disseminated materials containing endorsements by and photographs of purported Center Owners who convey the impression that ordinary consumers can successfully start and operate one or a combination of respondents' home-based business ventures. These materials include but are not necessarily limited to the attached Exhibit C. For example, these materials contain the following statements and depictions:

(a) "LEE STOUT: I am a very satisfied CBSI Center Owner. Without my involvement with CBSI the opportunities that have become realities would not have been possible. The CBSI telecommunications program has enabled me to grow my business to the point where I can make \$100,000+ per year. . . . If I can be successful at this, anyone can!"

(b) "DOUG STROUD: I earned \$101,865 in one year with my own CBSI business. I am running Voice Mail and Computer Home Monitor. CBSI software is the best available."

(c) "CURTIS MAPP: I now have 258 subscribers to the CBSI Computerized Monitor Service program. Each subscriber is billed at \$30.00 per month, which means I'm earning over \$7,700 per month with this program alone."

10. Beginning no later than January 1991, and continuing through the present, respondents have sold their home-based business ventures to approximately 15,000 consumers. Center Owners ordinarily spent between \$3,000 and \$16,000 on respondents' products and services.

PROFITABILITY

11. Through the means described in paragraphs five through ten, respondents have represented, expressly or by implication, that CBSI Center Owners ordinarily operate profitable businesses out of their own homes.

12. In truth and in fact CBSI Center Owners do not ordinarily operate profitable businesses out of their own homes. Indeed, it is rare for CBSI Center Owners to recoup even their initial investments.

13. Therefore, the representation set forth in paragraph eleven was, and is, false or misleading.

SUBSTANTIAL INCOME

14. Through the means described in paragraphs five through ten, respondents have represented, expressly or by implication, that:

- a. CBSI Center Owners ordinarily earn substantial income.
- b. CBSI Center Owners can reasonably expect to achieve a specific level of earnings, such as income of \$4,000 per month.

15. In truth and in fact:

a. CBSI Center Owners do not ordinarily earn substantial income. Indeed, the vast majority of Center Owners never even recoup their initial average investments of approximately \$9,000.

b. CBSI Center Owners can not reasonably expect to achieve a specific level of earnings, such as income of \$4,000 per month. Indeed, the vast majority of Center Owners not only never earn \$4,000 per month, but never earn \$4,000 over the duration of their businesses.

16. Therefore, the representations set forth in paragraph fourteen were, and are, false or misleading.

ENDORSEMENTS: ACTUAL EXPERIENCES

17. Through the means described in paragraph nine, respondents have represented, expressly or by implication, that CBSI Center Owner endorsements appearing in respondents' advertisements and promotional materials reflect the actual experiences of those Center Owners.

18. In truth and in fact, in numerous instances, CBSI Center Owner endorsements appearing in respondents' advertisements and promotional materials do not reflect those Center Owners' actual experiences.

19. Therefore, the representation set forth in paragraph seventeen was, and is, false or misleading.

ENDORSEMENTS: TYPICALITY AND ORDINARINESS

20. Through the means described in paragraph nine, respondents have represented, expressly or by implication, that CBSI Center

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Owner endorsements appearing in respondents' advertisements and promotional materials reflect the typical or ordinary experiences of Center Owners who have attempted to use CBSI's products or services.

21. In truth and in fact, CBSI Center Owner endorsements appearing in respondents' advertisements and promotional materials do not reflect the typical or ordinary experiences of Center Owners who have attempted to use CBSI's products or services.

22. Therefore, the representation set forth in paragraph twenty was, and is, false or misleading.

SUBSTANTIATION FOR EARNINGS CLAIMS

23. Through the use of the statements and depictions contained in the respondents' advertisements and promotional materials referred to in paragraph fourteen, respondents have represented, expressly or by implication, that they possessed and relied upon a reasonable basis that substantiated the representations set forth in paragraph fourteen, at the time the representations were made.

24. In truth and in fact, respondents did not possess and rely upon a reasonable basis that substantiated the representations set forth in paragraph fourteen, at the time the representations were made. Therefore, the representation set forth in paragraph twenty-three was, and is, false or misleading.

AUTOMATIC TELEPHONE DIALING SYSTEMS

25. Through the means described in paragraphs five through ten, respondents have represented, expressly or by implication, that consumers can successfully utilize automatic telephone dialing systems to market their businesses.

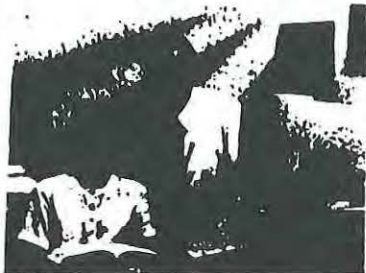
26. Respondents have failed to disclose in their advertisements and promotional materials for the outbound telemarketing programs that federal law prohibits the use of an automatic telephone dialing system in the unattended mode to initiate a telephone call to any residential telephone line to transmit an unsolicited advertisement for commercial purposes without the prior express consent of the called party. This fact would be material to consumers in their purchase or use of respondents' home-based business ventures. The failure to disclose this fact, in light of the representation made, was, and is, a deceptive practice.

27. The acts and practices of respondents as alleged in this complaint constitute unfair or deceptive acts or practices in or affecting commerce in violation of Section 5(a) of the Federal Trade Commission Act.

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EXHIBIT A

**FREE CBSI 486 Computer**

Earn \$4,000 Per Month From Your Home With A Computer!

Begin part-time and still retain the security of your present position. This is a proven turnkey business an individual or couple can run. If you purchase our software and business program, we will give you the computer and printer. If you already own a computer, you may receive a discount. You do not need to own, or know how to run, a computer—we will provide free, home office training. Financing available.

Learn how other couples, and individuals like yourself, are building a lifetime income!

To receive free cassettes and color literature, call toll-free: **1-800-343-8014, ext. 145**

(in Indiana: 317-758-4415) Or Write

COMPUTER BUSINESS SERVICES, INC., 2500 BLAZA, STE. 145, SHERIDAN, INDIANA 46069

Complaint

EXHIBIT B

EXHIBIT B

EARN \$4,000 PER MONTH ON THE NEW INSTANT INFORMATION SUPERHIGHWAY

All you need is a kitchen table, computer, modem and a telephone

There is an exploding worldwide need for instant information. You can now be part of the start of a revolutionary new industry.

Computer Business Services Inc. the world leader in instant information immediately needs couples and individuals to provide these services from their homes. You may start part time and retain the security of your present job. Quit spending money on your computer and let it earn money for you. We provide a complete operation including everything you need to start plus the complete training to be a success.

If you purchase our software and training materials you need a 386 or 486 computer, modem, color monitor and printer at no extra cost. If you already own a computer we will give you a discount. Financing available.

Call 1-800-343-8014 ext. 2050

24 hours a day to receive FREE color information and live cassette tapes that let you know you can profit from and be a part of the new instant information superhighway.

WORLD'S LARGEST POSTCARD

WARNING: Statistics show that reading this card
can change your life!




NICK ZICHICH

NICK ZICHICH
I earned \$1,000 in one week selling personalized children's books part time. I'm also running the Financial Aid for College program, and I sell a lot through high schools. I have started on Voice Mail and Voice Message Center. I now have 30 accounts, and I'm growing about 20 new accounts per week. I'm done with working hard for someone else. The sky's the limit for me."



LEE STOU



LEE STOTT

"I am a very satisfied CBSI Center Owner. Without my involvement with CBSI the opportunities that have become realities would not have been possible. The CBSI telecommunications program has enabled me to grow my business to the point I where I can make \$100,000+ per yr. Thanks to all at CBSI, from the tech support to customer service, marketing support and everyone in between. If I can be successful at this, anyone can!"

**SHARON MALTAGLIATI**

SHARON MALCOLM: "George (Douglass), thank you for giving me the strength to 'go out on a limb.' It was because of the people that I came to know from listening to your tapes all times (wow), that I knew we had to drive to Sheridan, Indiana, to meet you. For years, just like you and Jeanie and so many other people, I have lived the burning desire to start my own business. I had a full-time job making an excellent wage, a beautiful home, cars, etc., however, I was not happy because my dream was getting further and further away from me. So here I am, working, working, working to build my dream. Please give my best to your entire staff. Everyone has been most helpful, and I look forward to working with all of you for many years to come."



DAVID SMITH

DAVID SMITH
I purchased a CBSI 1000 Monogram & Embroidery machine and went into business. I now have more business than I can actually handle. I try to get at least \$30 per hour from my machine. Most days I gross \$400 and spend \$100 for shirts, thread, etc. I can literally set my machine up anywhere and do lots of business: animal shows, malls, fairs, etc. The business is very exciting and very profitable.



RHONDA SILVERMAN

Q "Your company gave me the chance to do something I didn't think was possible. Without your company, I would be stuck in a 9-5, job lighting with a stupid boss about taking my children to the doctor for staying home when they are sick! With my CBSI home business I am able to play a more active part in my children's lives. At the same time I am also able to provide for my family financially. I am also able to make a difference in the lives (and education) of the children in my community. Without your wonderful company, none of this would be possible."



NON BELLA...

"I couldn't believe what I read and I heard on the tapes. It was just so good to be true. But it is true. Everything works great and the support staff is great. I work the Time: Weather and Lottery program. I have 23 advertising slots, and I sell them for \$60 to \$100 per slot. I paid for my initial investment really quick. I am also selling Personalized Children's Books. I have also sold \$70,000 worth of computer systems. I believe in luck and the harder I work the luckier I seem to get."



MARK BUSH

"My name is Mark Grant and I'm running the CBSI Video Billboard program. I recently signed a major cable company for advertising 10,000 coupons each month and plan to do much more. I also signed up three video stores as well. The concept is great and the business is great."



DOUG STERN


"I earned \$10,865 in one year with my own CBSI business. I am running Voice Mail and Computer Home Monitor. CBSI software is the best available. I believe CBSI service is Great! Great! The people take whatever time they need to help you. I am happy."

Thanks CBSI!

**SAFETY CONSIDERATIONS** •

My husband and I have been Gender Owners for 14 months, and we just want to say THANK YOU to all the folks at CBST for their support and help. We are truly so glad that this company will take care of these Gender Owners. It is not a flake by night organization and we do appreciate that. We look forward to what the future holds.

[illegible]


 Congratulations! Keep up the great work! We need your help in the fight for CBST's right to have the billions of dollars that Microsoft Corp. has the same proportion that WorldTel's Corp. has to the special global network. But the CBST's technical support team is very big, strong and grows and is the best in the world.

sprak for a few Center Group and we sale you *****



1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023, 2024, 2025, 2026, 2027, 2028, 2029, 2030, 2031, 2032, 2033, 2034, 2035, 2036, 2037, 2038, 2039, 2040, 2041, 2042, 2043, 2044, 2045, 2046, 2047, 2048, 2049, 2050, 2051, 2052, 2053, 2054, 2055, 2056, 2057, 2058, 2059, 2060, 2061, 2062, 2063, 2064, 2065, 2066, 2067, 2068, 2069, 2070, 2071, 2072, 2073, 2074, 2075, 2076, 2077, 2078, 2079, 2080, 2081, 2082, 2083, 2084, 2085, 2086, 2087, 2088, 2089, 2090, 2091, 2092, 2093, 2094, 2095, 2096, 2097, 2098, 2099, 2100, 2101, 2102, 2103, 2104, 2105, 2106, 2107, 2108, 2109, 2110, 2111, 2112, 2113, 2114, 2115, 2116, 2117, 2118, 2119, 2120, 2121, 2122, 2123, 2124, 2125, 2126, 2127, 2128, 2129, 2130, 2131, 2132, 2133, 2134, 2135, 2136, 2137, 2138, 2139, 2140, 2141, 2142, 2143, 2144, 2145, 2146, 2147, 2148, 2149, 2150, 2151, 2152, 2153, 2154, 2155, 2156, 2157, 2158, 2159, 2160, 2161, 2162, 2163, 2164, 2165, 2166, 2167, 2168, 2169, 2170, 2171, 2172, 2173, 2174, 2175, 2176, 2177, 2178, 2179, 2180, 2181, 2182, 2183, 2184, 2185, 2186, 2187, 2188, 2189, 2190, 2191, 2192, 2193, 2194, 2195, 2196, 2197, 2198, 2199, 2200, 2201, 2202, 2203, 2204, 2205, 2206, 2207, 2208, 2209, 2210, 2211, 2212, 2213, 2214, 2215, 2216, 2217, 2218, 2219, 2220, 2221, 2222, 2223, 2224, 2225, 2226, 2227, 2228, 2229, 2230, 2231, 2232, 2233, 2234, 2235, 2236, 2237, 2238, 2239, 2240, 2241, 2242, 2243, 2244, 2245, 2246, 2247, 2248, 2249, 2250, 2251, 2252, 2253, 2254, 2255, 2256, 2257, 2258, 2259, 2260, 2261, 2262, 2263, 2264, 2265, 2266, 2267, 2268, 2269, 2270, 2271, 2272, 2273, 2274, 2275, 2276, 2277, 2278, 2279, 2280, 2281, 2282, 2283, 2284, 2285, 2286, 2287, 2288, 2289, 2290, 2291, 2292, 2293, 2294, 2295, 2296, 2297, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306, 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317, 2318, 2319, 2320, 2321, 2322, 2323, 2324, 2325, 2326, 2327, 2328, 2329, 2330, 2331, 2332, 2333, 2334, 2335, 2336, 2337, 2338, 2339, 2340, 2341, 2342, 2343, 2344, 2345, 2346, 2347, 2348, 2349, 2350, 2351, 2352, 2353, 2354, 2355, 2356, 2357, 2358, 2359, 2360, 2361, 2362, 2363, 2364, 2365, 2366, 2367, 2368, 2369, 2370, 2371, 2372, 2373, 2374, 2375, 2376, 2377, 2378, 2379, 2380, 2381, 2382, 2383, 2384, 2385, 2386, 2387, 2388, 2389, 2390, 2391, 2392, 2393, 2394, 2395, 2396, 2397, 2398, 2399, 2400, 2401, 2402, 2403, 2404, 2405, 2406, 2407, 2408, 2409, 2410, 2411, 2412, 2413, 2414, 2415, 2416, 2417, 2418, 2419, 2420, 2421, 2422, 2423, 2424, 2425, 2426, 2427, 2428, 2429, 2430, 2431, 2432, 2433, 2434, 2435, 2436, 2437, 2438, 2439, 2440, 2441, 2442, 2443, 2444, 2445, 2446, 2447, 2448, 2449, 2450, 2451, 2452, 2453, 2454, 2455, 2456, 2457, 2458, 2459, 2460, 2461, 2462, 2463, 2464, 2465, 2466, 2467, 2468, 2469, 2470, 2471, 2472, 2473, 2474, 2475, 2476, 2477, 2478, 2479, 2480, 2481, 2482, 2483, 2484, 2485, 2486, 2487, 2488, 2489, 2490, 2491, 2492, 2493, 2494, 2495, 2496, 2497, 2498, 2499, 2500, 2501, 2502, 2503, 2504, 2505, 2506, 2507, 2508, 2509, 2510, 2511, 2512, 2513, 2514, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2525, 2526, 2527, 2528, 2529, 2530, 2531, 2532, 2533, 2534, 2535, 2536, 2537, 2538, 2539, 2540, 2541, 2542, 2543, 2544, 2545, 2546, 2547, 2548, 2549, 2550, 2551, 2552, 2553, 2554, 2555, 2556, 2557, 2558, 2559, 2560, 2561, 2562, 2563, 2564, 2565, 2566, 2567, 2568, 2569, 2570, 2571, 2572, 2573, 2574, 2575, 2576, 2577, 2578, 2579, 2580, 2581, 2582, 2583, 2584, 2585, 2586, 2587, 2588, 2589, 2590, 2591, 2592, 2593, 2594, 2595, 2596, 2597, 2598, 2599, 2600, 2601, 2602, 2603, 2604, 2605, 2606, 2607, 2608, 2609, 2610, 2611, 2612, 2613, 2614, 2615, 2616, 2617, 2618, 2619, 2620, 2621, 2622, 2623, 2624, 2625, 2626, 2627, 2628, 2629, 2630, 2631, 2632, 2633, 2634, 2635, 2636, 2637, 2638, 2639, 2640, 2641, 2642, 2643, 2644, 2645, 2646, 2647, 2648, 2649, 2650, 2651, 2652, 2653, 2654, 2655, 2656, 2657, 2658, 2659, 2660, 2661, 2662, 2663, 2664, 2665, 2666, 2667, 2668, 2669, 2670, 2671, 2672, 2673, 2674, 2675, 26

I now have 118 subscribers to the CBSI Mail program. Monitor Service program. Each subscriber is billed \$30.00 per month, which means I'm earning over \$3,500 per month with this program alone. Thanks to my efforts at CBSI for your assistance, especially in the Business Service and Customer Service. No doubt you're going to be getting a lot of calls as I take on other projects.



CLASSICAL 141

[illegible]

Call your program advisor **TODAY** at
1-800-545-2274, ext. 347.

66,000,000,000

Complaint

EXHIBIT C

PAID
Per. No. 100
10/10/80

AA0J00196

New Programs In The Works!



"INSTANT INFORMATION" SUPERHIGHWAY RAMP
We have the new computer program for downloading new data. Our "Instant Information" program can provide you with the latest information on Superhighway.

*** Bulletin Board Services (BBS) and Internet Access**
We are developing our new program for our Bulletin Board Services (BBS) and Internet Access. This program will allow you to access the Internet and our Bulletin Board Services. It will also allow you to access our database of information on Superhighway.

*** SuperPaper Sales**
We are developing our new program for SuperPaper Sales. This program will allow you to sell SuperPaper. It will also allow you to access our database of information on Superhighway.

*** Computer Credit Check**
We are developing our new program for Computer Credit Check. This program will allow you to check the credit of your computer. It will also allow you to access our database of information on Superhighway.

*** Medicine History**
We are developing our new program for Medicine History. This program will allow you to access the history of medicine. It will also allow you to access our database of information on Superhighway.

*** 800 Number Marketing**
We are developing our new program for 800 Number Marketing. This program will allow you to market 800 numbers. It will also allow you to access our database of information on Superhighway.

*** Personalized Cradle**
We are developing our new program for Personalized Cradle. This program will allow you to create a personalized cradle. It will also allow you to access our database of information on Superhighway.

*** Power Resume**
We are developing our new program for Power Resume. This program will allow you to create a power resume. It will also allow you to access our database of information on Superhighway.

*** More programs in the works!**
We are developing many more programs. We will be releasing them soon. We will also allow you to access our database of information on Superhighway.

*** 800 Number Marketing**
We are developing our new program for 800 Number Marketing. This program will allow you to market 800 numbers. It will also allow you to access our database of information on Superhighway.

*** Personalized Cradle**
We are developing our new program for Personalized Cradle. This program will allow you to create a personalized cradle. It will also allow you to access our database of information on Superhighway.

HAVE YOU RECEIVED THE COLOR LITERATURE YOU ORDERED?

You should have received your literature packet and tape by now. If you have not, please call us at 1-800-545-2274, ext. 347 and we will send you another.

For Further Information Listen to the Tapes They Explain All Of The Following Services In Detail

1. Telephone Services

24-hour service — Show customers how to arrive and answer calls on your computer 24 hours a day.
24-hour service — Save company time and money eliminating personal phone calls at work.
24-hour service — You make a series of messages available — 24 hours a day for churches, real estate, etc.
24-hour service — You offer these services on telephone: school announcements, community events, etc.
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2. Review ARMs — Review ARMs to locate errors and get returns for the owner.

3. Review ARMs — Review ARMs to locate errors and get returns for the owner.

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18. Review ARMs — Review ARMs to locate errors and get returns for the owner.

19. Review ARMs — Review ARMs to locate errors and get returns for the owner.

20. Review ARMs — Review ARMs to locate errors and get returns for the owner.

FREE PROGRAM

If your program advisor within seven (7) days from the date you receive this card and place an order for one of our packages, we will send you a FREE PROGRAM. Start one of our standard packages (5 or 10 programs), or pick several programs you like and call from advisor at 1-800-545-2274. Your program advisor's job is to try and work out a way you can start your own business today.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondents named in the caption hereof, and the respondents having been furnished thereafter with a copy of a draft of complaint which the Chicago Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondents with violations of the Federal Trade Commission Act; and

The respondents, their attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondents of all the jurisdictional facts set forth in the aforesaid draft of complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondents that the law has been violated as alleged in such complaint, and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondents have violated the said Act, and that complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, and having duly considered the comments filed thereafter by interested persons pursuant to Section 2.34 of its Rules, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings and enters the following order:

1. Respondent CBSI is an Indiana Corporation with its principal place of business at CBSI Plaza, Sheridan, Indiana.

2. Respondent Andrew L. Douglass is an officer of CBSI. Individually or in concert with others, he formulates, directs, controls, or participates in the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of CBSI.

3. Respondent Matthew R. Douglass is a supervisory employee of CBSI. Individually or in concert with others, he formulates, directs, controls, or participates in the policies, acts, or practices of the corporation, including the acts or practices alleged in this

complaint. His principal office or place of business is the same as that of CBSI.

4. Respondent Peter B. Douglass is a supervisory employee of CBSI. Individually or in concert with others, he formulates, directs, controls, or participates in the policies, acts, or practices of the corporation, including the acts or practices alleged in this complaint. His principal office or place of business is the same as that of CBSI.

5. The acts and practices of the respondents alleged in this complaint have been in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act.

6. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondents, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For purposes of this order, the following definitions shall apply:

1. *"Business venture"* means any written or oral business arrangement, however denominated, whether or not covered by the Federal Trade Commission's trade regulation rule entitled "Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures," 16 CFR Part 436, and which consists of payment of any consideration for:

A. The right to offer, sell, or distribute goods, or services (whether or not identified by a trademark, service mark, trade name, advertising, or other commercial symbol); and

B. More than nominal assistance to any person or entity in connection with or incident to the establishment, maintenance, or operation of a new business or the entry by an existing business into a new line or type of business.

2. *"Clearly and prominently"* shall mean as follows:

A. In a television or video advertisement, the disclosure shall be presented simultaneously in both the audio and video portions of the advertisement. The audio disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and

comprehend it. The video disclosure shall be of a size and shade, and shall appear on the screen for a duration, sufficient for an ordinary consumer to read and comprehend it.

B. In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

C. In a print or electronic advertisement, the disclosure shall be in a type size, and in a location, that is sufficiently noticeable for an ordinary consumer to see and read, in print that contrasts with the background against which it appears.

Nothing contrary to, inconsistent with, or in mitigation of the disclosure shall be used in any advertisement.

3. Unless otherwise specified, "*respondents*" shall mean Computer Business Services, Inc., a corporation, its successors and assigns and its officers; Andrew L. Douglass, individually and as an officer of the corporation; Matthew R. Douglass, individually; and Peter B. Douglass, individually; and each of the above's agents, representatives and employees.

4. "*In or affecting commerce*" shall mean as defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

5. "*Automatic telephone dialing system*" shall mean as defined in the Telephone Consumer Protection Act, 47 U.S.C. 227(a)(1).

I.

It is ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any business venture, shall not misrepresent, expressly or by implication:

A. That consumers who purchase or use such business ventures ordinarily succeed in operating profitable businesses out of their own homes;

B. That consumers who purchase or use such business ventures ordinarily earn substantial income;

C. The existence of a market for the products and services promoted by respondents;

D. The amount of earnings, income, or sales that a prospective purchaser could reasonably expect to attain by purchasing a business venture;

E. The amount of time within which the prospective purchaser could reasonably expect to recoup his or her investment; or

F. By use of hypothetical examples or otherwise, that consumers who purchase or use such business ventures earn or achieve from such participation any stated amount of profits, earnings, income, or sales. Nothing in this paragraph or any other paragraph of this order shall be construed so as to prohibit respondents from using hypothetical examples which do not contain any express or implied misrepresentations or from representing a suggested retail price for products or services.

II.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any business venture, shall not represent, expressly or by implication, the performance, benefits, efficacy or success rate of any product or service that is a part of such business venture, unless such representation is true and, at the time of making the representation, respondents possess and rely upon competent and reliable evidence that substantiates such representation. For purposes of this order, if such evidence consists of any test, analysis, research, study, or other evidence based on the expertise of professionals in the relevant area, such evidence shall be "competent and reliable" only if it has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

III.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale, or distribution of any business venture or any product or service that is part of any business venture in or affecting commerce, shall not:

A. Use, publish, or refer to any user testimonial or endorsement unless respondents have good reason to believe that at the time of such use, publication, or reference, the person or organization named subscribes to the facts and opinions therein contained; or

B. Represent, in any manner, expressly or by implication, that the experience represented by any user testimonial or endorsement of the product represents the typical or ordinary experience of members of the public who use the product, unless:

1. The representation is true and, at the time it is made, respondents possess and rely upon competent and reliable evidence that substantiates the representation; or

2. Respondents disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either:

a. What the generally expected results would be for users of the product, or

b. The limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

Provided, however, that when endorsements and user testimonials are used, published, or referred to in an audio cassette tape recording, such disclosure shall be deemed to be in close proximity to the endorsements or user testimonials when the disclosure appears at the beginning and end of each side of the audio cassette tape recording containing such endorsements or user testimonials. Provided further, however, that when both sides of an audio cassette tape recording contain such endorsements or user testimonials, the disclosure need only appear at the beginning and end of the first side and the end of the second side of the audio cassette tape recording.

For purposes of this Part, "endorsement" shall mean as defined in 16 CFR 255.0(b).

IV.

It is further ordered, That respondents, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any business venture utilizing, employing or involving in any

manner, an automatic telephone dialing system, shall disclose, clearly and prominently, and in close proximity to any representation regarding the use or potential use of an automatic telephone dialing system to transmit an unsolicited advertisement for commercial purposes without the prior express consent of the called party, that federal law prohibits the use of an automatic telephone dialing system to initiate a telephone call to any residential telephone line using an artificial or prerecorded voice to transmit an unsolicited advertisement for commercial purposes without the prior express consent of the called party unless a live operator introduces the message. Nothing in this paragraph or any other paragraph of this order shall be construed so as to prohibit respondents from making truthful statements or explanations regarding the laws and regulations regarding the use of automatic telephone dialing systems.

V.

It is further ordered, That respondent Computer Business Services, Inc., directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, sale or distribution of any product or service, shall not make any false or misleading statement or representation of fact, expressly or by implication, material to a consumer's decision to purchase respondents' products or services.

VI.

It is further ordered, That:

A. Respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, shall pay to the Federal Trade Commission by electronic funds transfer the sum of five million dollars (\$5,000,000) no later than fifteen (15) days after the date of service of this order. In the event of any default on any obligation to make payment under this Part, interest, computed pursuant to 28 U.S.C. 1961(a) shall accrue from the date of default to the date of payment. In the event of default, respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, shall be jointly and severally liable.

B. Payment of the sum of five million dollars (\$5,000,000) in accordance with subpart A above shall extinguish any monetary claims the FTC has against Jeanette L. Douglass and George L. Douglass based on the allegations set forth in the complaint as of the date of entry of this order. Nothing in this paragraph or any other paragraph of this order shall be construed to prohibit the FTC from seeking administrative or injunctive relief against Jeanette L. Douglass or George L. Douglass.

C. The funds paid by respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, pursuant to subpart A above shall be paid into a redress fund administered by the FTC and shall be used to provide direct redress to purchasers of Computer Business Services, Inc. Payment to such persons represents redress and is intended to be compensatory in nature, and no portion of such payment shall be deemed a payment of any fine, penalty, or punitive assessment. If the FTC determines, in its sole discretion, that redress to purchasers is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury. Respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission. Customers of respondents, as a condition of their receiving payments from the Redress Fund, shall be required to execute releases waiving all claims against respondents, their officers, directors, employees, and agents, arising from the sale of Computer Business Services, Inc. business ventures by respondents prior to the date of issuance of this order. The Commission shall provide respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, with the originals of all such executed releases received from respondents' customers.

VII.

It is further ordered, That respondents Computer Business Services, Inc., its successors and assigns, Andrew L. Douglass, Matthew R. Douglass, and Peter B. Douglass, shall for a period of five (5) years after the last date of dissemination of any representation covered by this order, maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All advertisements and promotional materials containing the representation;

B. All materials that were relied upon in disseminating the representation; and

C. All tests, reports, studies, surveys, demonstrations, or other evidence in their possession or control that contradict, qualify, or call into question the representation, or the basis relied upon for the representation, including complaints and other communications with consumers or with governmental or consumer protection organizations.

VIII.

It is further ordered, That respondent Computer Business Services, Inc., and its successors and assigns, and respondent Andrew L. Douglass, for a period of five (5) years after the date of issuance of this order, shall deliver a copy of this order to all current and future principals, officers, directors, and managers, and to all current and future employees, agents, and representatives having responsibilities with respect to the subject matter of this order, and shall secure from each such person a signed and dated statement acknowledging receipt of the order. Respondents shall deliver this order to current personnel within thirty (30) days after the date of service of this order, and to future personnel within thirty (30) days after the person assumes such position or responsibilities.

IX.

It is further ordered, That respondent Computer Business Services, Inc. and its successors and assigns shall notify the Commission at least thirty (30) days prior to any change in the corporation that may affect compliance obligations arising under this order, including but not limited to a dissolution, assignment, sale, merger, or other action that would result in the emergence of a successor corporation; the creation or dissolution of a subsidiary, parent, or affiliate that engages in any acts or practices subject to this order; the proposed filing of a bankruptcy petition; or a change in the corporate name or address. Provided, however, that, with respect to any proposed change in the corporation about which respondents learn fewer than thirty (30) days prior to the date such action is to take place, respondents shall notify the Commission as soon as is

practicable after obtaining such knowledge. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

X.

It is further ordered, That respondents Andrew L. Douglass, Matthew R. Douglass and Peter B. Douglass, for a period of five (5) years after the date of issuance of this order, shall notify the Commission of the discontinuance of his current business or employment, or of his affiliation with any new business or employment. The notice shall include respondents' new business addresses and telephone numbers and a description of the nature of the business or employment and his duties and responsibilities. All notices required by this Part shall be sent by certified mail to the Associate Director, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C.

XI.

It is further ordered, That Computer Business Services Inc. and its successors and assigns, and respondents Andrew L. Douglass, Matthew R. Douglass and Peter B. Douglass shall, within sixty (60) days after the date of service of this order, and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this order.

XII.

This order will terminate on January 21, 2017, or twenty (20) years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any Part in this order that terminates in fewer than twenty (20) years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this Part.

Provided, further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this Part as though the complaint had never been filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

Complaint

123 F.T.C.

IN THE MATTER OF

VICTORIA BIE

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT

Docket C-3708. Complaint, Jan. 22, 1997--Decision, Jan. 22, 1997

This consent order prohibits, among other things, a California-based dietary supplement manufacturer, Victoria Bie d/b/a Body Gold, from making certain claims for dietary supplements, without competent and reliable scientific evidence to support them; from misrepresenting the results of any test, study or research; and from representing that any testimonial or endorsement is the typical experience of users of the advertised product, unless the claim is substantiated or the respondent discloses the generally expected results clearly and prominently.

Appearances

For the Commission: *Janice Charter and Sohni Bendiks.*

For the respondent: *H. Patrick Noonan, Woodland Hills, CA.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Victoria Bie doing business as Body Gold ("respondent") has violated the provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent Victoria Bie is the sole proprietor of Body Gold, a California company with its principal office or place of business located at 5930 La Jolla Hermosa, La Jolla, California. Respondent formulates, directs, and controls the acts and practices of Body Gold, including the acts and practices alleged in this complaint.

PAR. 2. Respondent has advertised, offered for sale, sold, and distributed nutritional supplements, including, but not limited to, Chromium Picolinate (200 and 400 mcg), 24K with Chromium Picolinate, Daily Energy Formula (with Chromium Picolinate), and CitriGold (with Chromium Picolinate and Hydroxycitric Acid), collectively referred to as "Chromium Picolinate," as weight loss, fat loss, muscle enhancing and/or muscle building aids. Respondent has

also advertised, offered for sale, sold and distributed the nutritional supplements L-Carnitine and Super Fat Burner Formula (containing L-Carnitine) as products that increase stamina or endurance, as well as aid in fat loss, weight loss and muscle toning. Each of respondent's nutritional supplements is a "food" and/or "drug" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act, 15 U.S.C. 52, 55.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements and promotional materials for Chromium Picolinate, including but not necessarily limited to the attached Exhibits A-L. These advertisements and promotional materials contain the following statements:

1. "LOSE THE FAT BUT KEEP THE MUSCLE...Chromium Picolinate" (Exhibit A, pgs. 1 and 2)
2. "There is now excellent scientific evidence that Chromium Picolinate can accelerate fat loss while helping to preserve or even increase muscle." (Exhibit A, pg. 2)
3. "Another double blind-study [Evans'] was conducted in young off-season football players participating in a six-week weight-training program. The results were the same: more muscle, less fat with Chromium Picolinate. Chromium Picolinate more than doubled the net benefits of exercise alone." (Exhibit A, pg. 2, col. 2)
4. "Stimulates Metabolism" (Exhibit A, pg. 3, col. 1)
5. "Chromium Picolinate helps you to KEEP THE MUSCLE - and maintain or increase your metabolic rate - while LOSING THE FAT." (Exhibit B, pg. 2, col. 2)
6. "CHROMIUM PICOLINATE FOR LESS FAT AND MORE MUSCLE" (Exhibits F, I, J, and K)
7. "BODY GOLD will rev up your sluggish metabolism so that you'll 'burn' fat and calories the way Mother Nature intended." (Exhibit C, pg. 1, col. 2)
8. "In fact, because of the way BODY GOLD works, you may even find that your 'inch loss' is much more dramatic than your overall weight loss." (Exhibit C, pg. 1, col. 2)
9. "...[Chromium Picolinate] has been shown in numerous human and animal studies to reduce body fat while increasing muscle." (Exhibit B, pg. 2, col. 2)
10. "In the 1988-89 groundbreaking studies, people given 200 micrograms of Chromium Picolinate daily lost 22% of their body fat in six weeks!" (Exhibit D, pg. 2, col. 2)
11. "People given Chromium Picolinate lost 22% of their body fat in six weeks. Moderate exercise routines were followed: no dietary restrictions were imposed." (Exhibit F)

12. "22% LESS BODY FAT IN SIX WEEKS with Chromium Picolinate" (Exhibit G)

13. "22% LESS BODY FAT"

"In a breakthrough university study with Chromium Picolinate, fat loss was dramatic: [GRAPH] Unhealthy body fat decreased 17% in only 2 weeks and continued to an average 22% loss at the end of the 6-week study. In only six weeks, participants given Chromium Picolinate lost 22% of their body fat!" (Exhibit H)

14. "Numerous studies now show that supplemental CHROMIUM PICOLINATE promotes fat loss and increases lean muscle. 200 micrograms taken daily can offer dramatic fitness benefits." (Exhibits G, I, K)

15. "UNIVERSITY STUDIES IDENTIFY CHROMIUM PICOLINATE as a 'trigger' for fat loss and lean muscle development." (Exhibit F)

16. "People taking Chromium Picolinate lost 22% of their body fat in only six weeks in a 1989 university study. Since then, numerous studies and millions of people have confirmed the exciting benefits of this safe, essential nutrient. Men and women across the country are talking about: LESS BODY FAT * WEIGHT LOSS * 'INCH LOSS' * MORE ENERGY * MORE LEAN MUSCLE * GREATER STAMINA * APPETITE CONTROL * LESS DESIRE FOR SWEETS" (Exhibits I, J, K)

17. "These and subsequent published studies show that Chromium Picolinate:

- *increases body fat metabolism
- *lowers elevated cholesterol levels
- *builds stronger, leaner muscle
- *regulates blood sugar
- *promotes longer life span in laboratory rats" (Exhibit D, pg. 2, col. 2)

18. "Medical studies show that Chromium Picolinate can also:

- *reduce cholesterol levels
- *regulate blood sugar" (Exhibit C, pg. 1, col. 1)

19. "The Fitness Essential * CHROMIUM PICOLINATE Less body fat * More muscle * Lower cholesterol * Blood sugar control * Weight loss" (Exhibit D, pg. 2)

20. "Recent clinical studies have used 400 micrograms of chromium to produce excellent weight-loss and fat-loss results. Your reward can be substantially greater fitness benefits when you DOUBLE THE CHROMIUM POWER. And Chromium Picolinate is perfectly safe at these reasonable, healthy amounts." (Exhibit E)

21. Testimonials from Exhibit L, Body Gold advertisement:

A. "Lost 13 pounds and feel great-thanks to Body Gold!" G.B., Mohrsville, PA

B. "Since I started Body Gold products I have lost a total of 36 inches and 64 pounds. I'm a proud Body Gold user." Karen Suleiman, Livonia, MI

C. "I've lost 20 pounds so far, and many, many inches!!...." Jennifer Papagno, Marlboro, MA

D. "Body Gold has become an important part of my daily life. I no longer crave chocolate or any sweets, and my appetite has decreased also. I've lost inches all over." Joan Decker, Troy, NY

E. "I saw inch loss in just a few days, and also a loss of appetite. I have more energy than ever." N.W., Wichita, TX

F. "Your product (Chromium Picolinate) is so great, in 2 weeks, I've lost inches already. I haven't eaten or craved sweets..." S.C., Buena Park, CA

G. "You have made me a believer. I could not get any of my dresses to fit when I needed to attend a special event. I started the 200 mcg chromium that day. One month later I can once again wear my clothes. I feel great! Thank you!" Marcy Baker, Bend, OR

H. "This is the best thing that I have ever tried and got results so fast! I have several friends as well as myself who have lost 20 pounds or more." M.G., Rocky Mtn., NC

I. "I lost lots of inches and 2 dress sizes!" G.H., Columbus, OH

J. "I feel great since starting Daily Energy Formula and I have lost 10 lbs. in the past month since starting Chromium Picolinate." M.S., Madison Hts., VA

K. "I tried your Dual Pak of Super Fat Burner Formula in combination with the Chromium Picolinate, and I AM HOOKED! I noticed immediate and dramatic fat loss, while I've noticed more muscle. I've finally managed to lose those impossible last 5 lbs. almost effortlessly." K.M., Edgewood, NM

L. "I lost 7-1/2 lbs. in 2 weeks with absolutely no change in diet - I feel better and want less food." Mary Guzy, Los Angeles, CA

M. "I've lost 10 pounds without trying to diet with this product. I feel great!" Sally Wymer, Friendswood, TX

22. Testimonials from Exhibit D, Body Gold flier:

BODY GOLD Customers write...About Chromium Picolinate:

[A] "This is my second order. I've lost 5 pounds and almost 2 jeans sizes..." R.N., Bucyrus, NY

[B] "It has definitely decreased my interest in sugar, specifically chocolate. Thanks so much!" Bonnie Murphy, Central Point, OR

[C] "I can't believe how much more energy I have. I've lowered my cholesterol by about 30 points. I've lost weight." Anonymous (by request), River Falls, WI

[D] "Initially I lost 9 lbs. in 11 days. I am hypoglycemic - which has virtually been totally controlled, no headaches - no sugar highs & lows. I love BODY GOLD!" D.T., Flushing, NY

About 24K with Chromium Picolinate:

[E] "I (lost) 10 lbs., and am able to maintain. BODY GOLD does make me feel better." Diane Wiles, Everett, WA

[F] "It makes me feel better. They (the tablets) are easy to take. I noticed I've lost inches." M.R.Y., Daytona Beach, FL

[G] "I am on a very strict diet, find it easier to stick with it. Also have control over hypoglycemia, never could get control before." L.P., Easley, SC

PAR. 5. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and

promotional materials attached as Exhibits A-L, respondent has represented, directly or by implication, that:

- A. Chromium Picolinate significantly reduces body fat.
- B. Chromium Picolinate causes significant weight loss.
- C. Chromium Picolinate causes rapid weight or fat loss.
- D. Chromium Picolinate significantly reduces serum cholesterol.
- E. Chromium Picolinate significantly increases human metabolism.
- F. Chromium Picolinate increases lean body mass and builds muscle.
- G. Chromium Picolinate causes weight loss without diet and/or strenuous exercise.
- H. Chromium Picolinate controls appetite and craving for sugar.
- I. Chromium Picolinate lowers or regulates blood sugar.
- J. Chromium Picolinate increases energy and/or stamina.
- K. Testimonials from consumers appearing in advertisements or promotional materials for Chromium Picolinate reflect the typical or ordinary experience of members of the public who have used the product.

PAR. 6. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A-L, respondent has represented, directly or by implication, that at the time she made the representations set forth in paragraph five, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 7. In truth and in fact, at the time she made the representations set forth in paragraph five, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph four, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits A-L, respondent has represented, directly or by implication, that scientific studies demonstrate that Chromium Picolinate:

- A. Significantly reduces body fat;

- B. Causes rapid body fat loss;
- C. Increases lean body mass and builds muscle;
- D. Causes significant weight loss;
- E. Significantly reduces serum cholesterol;
- F. Lowers or regulates blood sugar; and
- G. Increases energy and/or stamina.

PAR. 9. In truth and in fact, scientific studies do not demonstrate that Chromium Picolinate:

- A. Significantly reduces body fat;
- B. Causes rapid body fat loss;
- C. Increases lean body mass and builds muscle;
- D. Causes significant weight loss;
- E. Significantly reduces serum cholesterol;
- F. Lowers or regulates blood sugar; or
- G. Increases energy and/or stamina.

Therefore the representations set forth in paragraph eight were, and are, false and misleading.

PAR. 10. Respondent has disseminated or caused to be disseminated advertisements and promotional materials for L-Carnitine and Super Fat Burner Formula, including but not necessarily limited to the attached Exhibits D and L. These advertisements and promotional materials contain the following statements:

1. "L-Carnitine - A powerful fat metabolizer praised by athletes for its ability to transport fatty acids more efficiently to the body's "fat burning energy centers"... By improving your fat metabolism, L-Carnitine can enhance your efforts at fat loss, weight loss, and muscle toning." (Exhibit D, pg. 1, col. 1)

2. "I have been particularly pleased with the Super Fat Burner Formula. I had a baby and within 2 months I have lost the 40 lbs. gained and have rebuilt the muscle definition I had lost during the pregnancy." Carol Lough Henderson, Stone Mtn., GA (Exhibit L)

3. "Adding the L-Carnitine has been really effective. It has dramatically improved my athletic performance and increased my overall stamina. Your products give me the fuel I need." Gail Smart, W. Medford, MA (Exhibit L)

PAR. 11. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph ten, including but not necessarily limited to the advertisements and

promotional materials attached as Exhibits D and L, respondent has represented, directly or by implication, that:

- A. Taking L-Carnitine as a supplement reduces body fat.
- B. Taking L-Carnitine as a supplement causes weight loss.
- C. Taking L-Carnitine as a supplement tones muscles.
- D. Taking L-Carnitine as a supplement increases stamina and enhances athletic performance.
- E. Testimonials from consumers appearing in advertisements or promotional materials for L-Carnitine reflect the typical or ordinary experience of members of the public who have used the product.

PAR. 12. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph ten, including but not necessarily limited to the advertisements and promotional materials attached as Exhibits D and L, respondent has represented, directly or by implication, that at the time she made the representations set forth in paragraph eleven, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 13. In truth and in fact, at the time she made the representations set forth in paragraph eleven, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph twelve was, and is, false and misleading.

PAR. 14. Respondent has disseminated or caused to be disseminated advertisements and promotional materials for CitriGold, including but not necessarily limited to, the attached Exhibit M. These advertisements and promotional materials contain the following statements:

1. "CitriGold is the weight-loss aid that combines the latest, most potent ingredients to help you:

*Lose weight *Reduce Body Fat *Control your appetite"

2. "Add CitriGold to your weight loss and exercise program for a leaner, slimmer, sleeker body than you would have thought possible."

PAR. 15. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph

fourteen, including but not necessarily limited to the advertisement attached as Exhibit M, respondent has represented, directly or by implication, that:

- A. CitriGold causes weight loss.
- B. CitriGold reduces body fat.
- C. CitriGold controls appetite.

PAR. 16. Through the use of the statements contained in the advertisements and promotional materials referred to in paragraph fourteen, including but not necessarily limited to the advertisement attached as Exhibit M, respondent has represented, directly or by implication, that at the time she made the representations set forth in paragraph fifteen, respondent possessed and relied upon a reasonable basis that substantiated such representations.

PAR. 17. In truth and in fact, at the time she made the representations set forth in paragraph fifteen, respondent did not possess and rely upon a reasonable basis that substantiated such representations. Therefore, the representation set forth in paragraph sixteen was, and is, false and misleading.

PAR. 18. The acts and practices of respondent as alleged in this complaint constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.

Complaint

123 F.T.C.

EXHIBIT A

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Lose the Fat

but Keep the

Muscle . . .

Chromium Picolinate

AT LAST THERE IS A SAFE
NUTRITIONAL SUPPLEMENT
THAT HELPS YOU LOSE
UNWANTED FAT MORE EASILY
AND QUICKLY, WHILE RETAIN-
ING VITAL MUSCLE TISSUE.
NOW YOU CAN HAVE A
TRIMMER, FIRMER, LEANER
BODY.

EXHIBIT A

LOSE THE FAT BUT KEEP THE MUSCLE

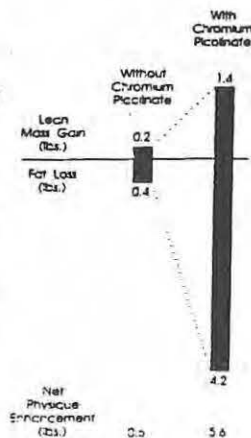
Most dieters who achieve significant weight loss lose far too much lean body mass (muscle and organ tissue). This not only diminishes strength and agility but also affects appearance. With less muscle, pleasing curves flatten, chests sink; arms and legs look spindly. *Even worse, this lessened lean body mass lowers your metabolic rate, making it that much harder to keep the fat off permanently — the yo-yo syndrome!*

There is now excellent scientific evidence that Chromium Picolinate can accelerate fat loss while helping to preserve or even increase muscle.

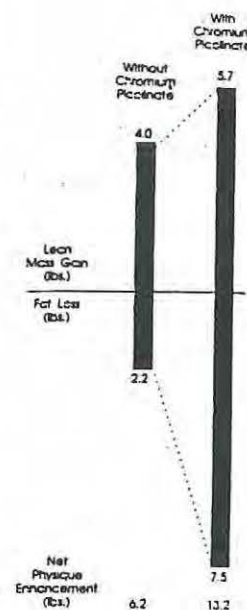
CONVINCING NEW EVIDENCE

Overweight adults were recruited by a prominent San Antonio weight loss clinic to participate in a weight loss study¹. About half of the volunteers received supplemental Chromium Picolinate (200 or 400 micrograms of chromium daily), while the others received placebos. Neither the participants nor the doctors evaluating them knew who was getting the chromium (a "double blind" study). The volunteers were not placed on any specific diet or exercise regimen, although most of them were motivated to lose weight. After only 60 days, these were the impressive results:

The changes in the placebo group were negligible. But the Chromium Picolinate group, on average, lost over four pounds of fat while gaining nearly a pound and a half of lean muscle for a Net Physique Enhancement of 5.6 pounds.



The effect in men alone was even more striking, with an average fat loss of 7.7 pounds. Interestingly, the greatest enhancement of muscle mass was seen in the older subjects, those above age 46, who gained 2.1 pounds of muscle tissue while losing 4.4 pounds of fat. This is especially important since muscle tissue typically declines with age.



Another double-blind study was conducted in young off-season football players participating in a six-week weight-training program². The results were much the same: more muscle, less fat with Chromium Picolinate. Chromium Picolinate more than doubled the net benefits of exercise alone.

These findings are also confirmed by animal studies. Scientists at Louisiana State University recently reported that young pigs receiving Chromium Picolinate achieved 7% more muscle with 21% less body fat as compared to pigs on an identical diet not receiving Chromium Picolinate.

LEANER AND FIRMER

Because many people gain muscle with Chromium Picolinate, their weight loss in pounds doesn't accurately reflect the benefits of chromium. Most users report that even a modest weight loss as shown on the bathroom scale is accompanied by

EXHIBIT A

lost inches and smaller clothing sizes. They look and are leaner and firmer. Chromium Picolinate promotes fat loss, while enhancing the muscle that helps to assure a trim physique.

WHAT IS CHROMIUM PICOLINATE?

Chromium Picolinate is an exceptionally bioactive source of the essential mineral chromium. Chromium plays a vital role in "sensitizing" the body's tissues to the hormone insulin. Weight gain in the form of fat tends to impair sensitivity to insulin and thus, in turn, makes it harder to lose weight⁴.

HOW DOES CHROMIUM PICOLINATE WORK?

Controls Hunger — Many people report that Chromium Picolinate helps to control appetite, especially sugar cravings. It is believed that chromium sensitizes the "glucostat" in the brain that monitors blood sugar availability and "tells" you when you're hungry or not hungry.

"Saves" Protein — This is very important. Insulin directly stimulates protein synthesis and retards protein breakdown in muscles^{5,6}. This "protein sparing" effect of insulin tends to decline during low calorie diets as insulin levels decline, which results in loss of muscle and organ tissue. By "sensitizing" muscle to insulin, Chromium Picolinate helps to preserve muscle in dieters so that they "burn" more fat and less muscle. Preservation of lean body mass has an important long-term positive effect on metabolic rate, helping dieters keep off the fat they've lost.

Stimulates Metabolism — Chromium Picolinate promotes efficient metabolism by aiding the thermogenic (heat producing) effects of insulin. Insulin levels serve as a rough index of the availability of food calories, so it's not at all surprising that insulin stimulates metabolism^{4,7,8}.

HOW MUCH CHROMIUM PICOLINATE SHOULD I TAKE FOR OPTIMAL WEIGHT LOSS?

Clinical trials with 200 to 400 micrograms of chromium daily produced significant benefits. Larger individuals and those engaged in strenuous work or exercise may see better results with higher levels — up to a maximum of 400 micrograms daily.

MORE IMPORTANT HEALTH BENEFITS OF CHROMIUM PICOLINATE

Efficient insulin appears to be important for cardiovascular health. Poor insulin sensitivity is a risk factor for hardening of the arteries and heart disease and is associated with other risk factors such as high blood pressure and high triglycerides. By promoting efficient insulin function, Chromium Picolinate may protect the heart and circulatory system.

In controlled clinical studies at San Diego's Mercy Hospital, Chromium Picolinate has been shown to reduce elevated cholesterol, and to improve control of blood sugar in mature-onset diabetes.

HERE'S A HEALTHFUL FOUR-STEP PROGRAM FOR WEIGHT CONTROL THAT REALLY WORKS:**STEP 1 REDUCE DIETARY FAT CONSUMPTION TO NO MORE THAN 20% OF CALORIES — EATING FAT MAKES YOU FAT!**

Dieticians traditionally have recommended overall calorie restriction for weight control, but it's now clear that fat calories should be specifically avoided^{9,10}. Dietary fat is calorie dense and nutrient poor. Once absorbed, it does little to control hunger or stimulate metabolism. Much of it is deposited directly in your body's fat stores, and most of the fat in your body derives from dietary fat. Weight conscious people should therefore specifically avoid fatty foods, keeping fat calories to

EXHIBIT A

20% or less of total calorie intake. (If you can achieve the 15% level provided by a traditional Japanese diet, all the better.) As noted by Dr. James Hill at the 1992 NIH-sponsored conference on obesity, "There are intriguing data suggesting that reducing fat without reducing calorie intake can reduce body fat levels." (Emphasis added.) To calculate the percentage of fat calories in a food, multiply grams of fat by 9 and divide by total calories.

Olives, avocados, nuts, vegetable oil, and margarine are all extremely high in fat. However most other foods not of animal origin are quite low in fat and are great for dieters. Among animal foods, skinless white meat poultry and fish (prepared without frying!) are good, as are non-fat and low-fat yogurt and cottage cheese, skim and 1% milk, and egg whites (not yolks). When you must use oil, use it very sparingly.

STEP 2 INCREASE DIETARY FIBER — LOW IN CALORIES; HIGH IN NUTRIENTS

High intakes of dietary fiber have a bulking effect that can help to control hunger. In addition, most high-fiber foods are low in fat, high in protective vitamins and minerals, and relatively low in caloric density. In your daily diet, emphasize fiber-rich foods such as whole-grain breads, cereals, and pastas, brown rice, beans, oatmeal, and fresh whole fruits and vegetables.

STEP 3 GET REGULAR AEROBIC EXERCISE AT LEAST THREE TIMES A WEEK — AND BURN CALORIES!

It's obvious that exercise burns calories. Equally important, there is strong evidence that regular aerobic training increases your metabolic rate while enhancing your body's capacity to burn fat^{11,12}. For significant weight control benefits, you should exercise at least three times weekly for at least thirty minutes per session. Choose exercises that engage large muscle groups (legs, hips & back) in continuous motion such as jogging, cycling, stair climbing, swimming or brisk walking. Exercise is crucial for long-term success in weight control.

STEP 4 TAKE CHROMIUM PICOLINATE DAILY — LOSE THE FAT; KEEP THE MUSCLE

There are sound scientific reasons to believe that Chromium Picolinate will provide its greatest benefits in people who are eating low-fat foods and getting regular exercise. In other words, it should help you to get better results from "being good"!

Sporadic calorie-restricted dieting rarely achieves lasting results. Permanent weight loss requires a permanent commitment to a healthier lifestyle. Most people can lose significant amounts of fat and decisively improve their physiques without calorie counting by following this simple four-step plan.

PUTTING IT ALL TOGETHER

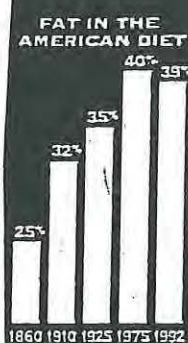
The best thing about Chromium Picolinate is that it makes other sensible weight control efforts more effective. Many people report that they have tried diet and exercise before, but say that they didn't get good results until they added Chromium Picolinate. Now they're enthusiastic about low-fat eating plus exercise and are ever-so-proud of their shapely new bodies! When your efforts are rewarded by good results, you're more likely to keep trying.

Chromium Picolinate, all by itself, isn't likely to make a fat person thin. But it can be the decisive component of an overall strategy for long-term weight control and, in the bargain, make an important contribution to good health.

There is now strong scientific evidence that good chromium nutrition is an essential (though not by itself sufficient) component of successful long-term weight control. According to U.S. Department of Agriculture studies, nine out of ten Americans get less than 50 micrograms of chromium daily as compared to the 50 to 200 micrograms recommended by the National Academy of Sciences. Supplementation with this important nutrient makes good sense.

EXHIBIT B

HIDDEN FAT IN THE AMERICAN DIET



The typical American diet is far too high in fat. In 1860, fat contributed 25% of calories consumed. Today this figure has reached 39%! It's no accident that average body weight and the incidence of obesity have risen concurrently.

Recent studies show that the nutrient Chromium Picolinate promotes a leaner, firmer physique — reducing body fat while helping to build and retain muscle. These remarkable benefits are optimized when dietary fat is kept to a minimum.

CHOOSING A LOW-FAT DIET

An all-important key to achieving and maintaining a lean physique is to eliminate much of the fat from your daily diet. Most people find that they can lose a significant amount of weight without making a conscious effort to reduce calorie intake, simply by **AVOIDING FATTY FOODS**. People switching to a low-fat diet typically eat increased amounts of food while losing weight. For example, when women enrolled in a breast cancer prevention program reduced dietary fat, **THEY ACHIEVED AND MAINTAINED AN AVERAGE WEIGHT LOSS OF 7 POUNDS WITHOUT ADDED EXERCISE OR DIETING.**

For best results, you should keep your fat intake **BELOW 20% OF TOTAL CALORIES**. You can achieve this—without the inconvenience of counting calories—simply by choosing foods with less than 20% fat calories.

The tables on the reverse side show the percent of calories from fat in common foods. Foods rated at 20% or less are recommended for regular consumption. Food rated at 20-40% may be used in modest amounts provided that most of your diet comes from lower-fat foods. With the exception of fish (which protects your cardiovascular system), higher fat foods should be used sparingly or on rare occasions only. When oil is used for cooking or salads, use the minimum amount. Choose canola oil, soybean oil or olive oil.

Fat contains nine calories per gram—more than twice as many as carbohydrate or protein, each of which contain four calories per gram. The fat-calorie values given for prepared dishes are specific examples and may not reflect the fat content of similar supermarket foods. Read labels, and learn to calculate the percentage fat calories in foods:

The top line of the new Nutrition Facts label gives you the Total Calories as well as Calories from Fat in a single serving. **Divide Calories from Fat by Total Calories to determine Percentage Fat Calories.** For example, if a frozen dinner provides 300 calories, and 108 fat calories, the Percentage Fat Calories is: $108 \div 300 = .36$ or 36%.

MANY LOW FAT FOODS NOW AVAILABLE

Many innovative food companies now offer low-fat or non-fat analogs of foods that traditionally are high in fat. You can now obtain cookies, pastries, soups, dressings, and sauces that are virtually fat-free. Many supermarkets offer 1% milk (17% calories from fat), non-fat yogurts and low-fat dairy desserts. Baked tortilla chips and low-fat frozen dinners can also be found.

Many foods that we think of as high in protein are

EXHIBIT B

actually higher in fat. Filet mignon, frankfurters, sausage, most lunch meats, and hamburger are examples of "high protein" foods that are 50 to 80% fat in terms of percentage of calories.

Significant sources of hidden fat are foods that purport to be low fat but are not. Two percent milk is a good example. Although only 2% of the volume of this milk is fat, 31% of "lowfat" milk's calories are fat calories! "Extra-lean" hamburger, 10% fat by weight, actually provides about 46% of its calories from fat. Don't be misled by claims that a product is a certain percentage fat-free. In foods with high water content (such as meats), "93% fat-free" may derive more than 30% of its calories from fat.

Fatty foods tend to be calorically dense, and thus are relatively low in most protective nutrients—vitamins, minerals, trace elements and fiber—on a per-calorie basis. Refined fats (e.g., butter, oils), and added sugars, are major sources of "empty calories" in the American diet. In effect, a high-fat, high-sugar diet robs you of many important nutrients.

Another major source of "empty calories" is alcohol. Alcohol may actually stimulate appetite in many people. Thus, alcohol calories are often excess calories and may lead to the well-known "beer belly". An ounce of pure alcohol contains nearly 200 calories. Therefore, moderation in alcohol consumption is crucial for weight control.

AN IMPORTANT BONUS: PROTECTION FROM HEART DISEASE AND CANCER

Another important benefit: a low-fat diet is likely to protect your heart and vascular system and reduce your risk for diabetes, hypertension, and cancers of the colon, breast, endometrium and ovary.

FOUR KEYS TO LIFE-LONG WEIGHT CONTROL

Avoiding fatty foods is crucial for weight control, but it's **only one** component of an overall strategy for maintaining a lean physique and vigorous good health:

1 REDUCE DIETARY FAT TO LESS THAN 20% OF DAILY CALORIES.

Most ingested fat is stored directly in your body's adipose (fatty) tissues, and most of your body fat derives from dietary fat. Once absorbed, dietary fat does little to control hunger or activate metabolism. Most fatty foods are calorie dense, promoting excess consumption of calories. In clinical studies, overweight and weight gain correlate strongly with fat calorie consumption, but **not** with total calorie intake.

2 EMPHASIZE HIGH-FIBER FOODS.

Whole grains, whole fruits, beans and most vegetables are good sources of dietary fiber, and are nutrient rich. Dietary fiber has a bulking effect that can aid appetite control. Fiber-rich foods are less calorie-dense and much more nutritious than refined flours, sugars, or juices. Soluble fiber supplements (e.g., psyllium) may also aid appetite control if consumed prior to meals.

3 GET REGULAR AEROBIC EXERCISE.

Aside from the obvious benefit of calories burned during exercise, exercise boosts your metabolic rate and increases your body's capacity to burn fat as a metabolic fuel. To achieve this benefit, you need to exercise aerobically at least three times weekly for at least 30 minutes per session—more is better. Aerobic exercise involves vigorous rhythmic motion of major muscles—for example, jogging, cycling, stair climbing, or brisk walking. Resistance exercise (e.g., weight lifting) is also beneficial for weight control, since it helps to build and retain muscle, a chief determinant of metabolic rate.

4 SUPPLEMENT YOUR DAILY DIET WITH THE ESSENTIAL MINERAL CHROMIUM PICOLINATE.

The essential trace mineral chromium, which is deficient in 9 out of 10 American diets, promotes efficient function of the hormone insulin. Good insulin activity is important for HUNGER CONTROL, for STIMULATING METABOLISM and for BUILDING AND RETAINING MUSCLE AND VITAL ORGAN TISSUE. Many people are poorly responsive to insulin, and scientists believe that this loss of sensitivity promotes overweight and obesity. Chromium is particularly beneficial for overweight people who typically have inefficient insulin function.

An exceptionally effective nutritional source of chromium, Chromium Picolinate, has been shown in numerous human and animal studies to reduce body fat while increasing muscle.

The ability of Chromium Picolinate to retain muscle is important to dieters, since up to 30% of the weight lost on most diets is muscle tissue. Loss of muscle reduces metabolic rate and thus promotes weight rebound—the "yo-yo" diet syndrome. Chromium Picolinate helps you to **KEEP THE MUSCLE**—and maintain or increase your metabolic rate—while **LOSING THE FAT**.

Used with a low-fat fiber-rich diet and regular exercise, Chromium Picolinate helps you to achieve a firmer, leaner physique. For optimal benefit, your daily supplementation program should provide 200 to 400 micrograms of chromium from Chromium Picolinate.

NUTRITION 21
1010 TURQUOISE STREET, SAN DIEGO, CA 92109
(619) 488-7423

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EXHIBIT C

CHROMIUM PICOLINATE: The Nutrient

This brochure explains how you can reduce body fat and increase muscle with BODY GOLD Chromium Picolinate. But the fitness benefits of this nutrient are only part of the story.

Medical studies¹ show that Chromium Picolinate can also:

- reduce cholesterol levels
- regulate blood sugar*

Since nine out of ten people don't get even the minimum amount of chromium essential to good health², supplemental chromium could be one of the most important additions you can make to your lifestyle.

References

1. Evans, G.W., "The effect of chromium picolinate on insulin controlled parameters in humans," INT. J. BIOSOCIAL MED. RESEARCH, Vol. 11(2); 163-180, 1989.
2. Anderson, R.A., Kozlovsky, A.S., "Chromium intake, absorption and excretion of subjects consuming self-selected diets, AM. J. CLIN. NUTR. 1985, 41:1177-1183.

NOTE: Although 200 micrograms of chromium was used in the cited studies, people taking 400 to 600 micrograms daily often report even greater noticeable benefit from the nutrient.

Chromium Picolinate has been shown to be an entirely safe and nontoxic supplement.

* Diabetics: Consult your physician before first use of any product containing chromium picolinate.

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BODY GOLD
5930 La Jolla Hermosa
La Jolla, CA 92037
(619) 459-2661

"The Midas Touch of good health:

== *Body Gold™* ==

**CHROMIUM
PICOLINATE**

for a slimmer, trimmer you

What Is Chromium Picolinate?

Chromium Picolinate is a safe, essential nutrient, and it can greatly enhance the results of your weight loss or fitness program. You may have already heard about it on television or read the stories in USA TODAY, LADIES' HOME JOURNAL, COSMOPOLITAN and LONGEVITY, or in dozens of other magazines and newspapers across the country. Or you may well have heard about it through "word-of-mouth", since thousands of pleased users are trimming down and shaping up faster and more easily than ever. You can bet they're talking about it!

What Will BODY GOLD Chromium Picolinate Do For Me?

BODY GOLD will rev up your sluggish metabolism so that you'll "burn" fat and calories the way Mother Nature intended. By correcting the fat content in your body (burning off the stored up fat as well as what you've eaten) you'll discover "inch loss" as well as weight loss. In fact, because of the way BODY GOLD works, you may even find that your "inch loss" is much more dramatic than your overall weight loss.

Here's what's happening to so many people—people just like YOU—who have added BODY GOLD to sensible eating and exercising habits:

EXHIBIT C

WEIGHT LOSS—People who haven't succeeded at permanent weight loss ever before are finding it much easier to drop, and keep off, those unwanted pounds. Unlike starvation diets and other dangerous programs, **BODY GOLD** simply restores an essential nutrient to your diet and brings your body's metabolism back to where it belongs. **BODY GOLD** promotes *healthy* weight loss!

"INCH LOSS"—"Redesigned" is how one woman described her new shape. Depending on how *your* body uses **BODY GOLD**, you may, at some point, lose a dress or belt size without seeing a corresponding weight loss. While the fat is being "burned" out of your body, lean muscle develops—toning and trimming you down. "Redesigned" shape is indeed an exciting (and very rewarding) benefit that many people report.

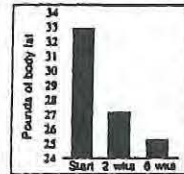
FAT LOSS—Not only does decreased body fat mean a slimmer, sleeker you—it's *healthier*, as well. Excess body fat has been tied to increased risk of certain cancers and heart disease. An active, "fat-free" life-style is the life-style of the '90s. And **BODY GOLD's** chromium has been described as the "nutrient of the '90s"!

MORE LEAN MUSCLE—While **BODY GOLD** works with your body's insulin to better "burn off" hidden body fat, it promotes the development of more lean muscle mass. Athletes and bodybuilders use Chromium Picolinate to enhance the results of their workouts. Whether you are male or female, you'll find that a firmer, leaner network of muscle strengthens both your physique and your sense of well-being.

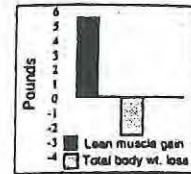
How Do I Know This Isn't A "Fad" Or Just "Sales Talk"?

Because two scientific studies discovered these exciting benefits before Chromium Picolinate was even available to the public. And since then it's been "tried and proved" by hundreds of thousands of enthusiastic people.

The studies were conducted at Bemidji State University in Minnesota. Young college athletes—in pretty good shape to start with!—experienced a *dramatic loss of body fat* when they were given only 200 micrograms of Chromium Picolinate daily. Although the muscle gain in these young men offset some of the "fat weight" loss, still overall weight loss occurred.



Fat loss was dramatic. Unhealthy body fat decreased by 17% in only 2 weeks and continued to an average 22% loss at the end of the 6-week study.



Weight loss occurred even as muscle was enhanced. Fat loss coupled with improved muscle tone and mass, has caused significant "inch loss" in many people.

There's no reason you couldn't see similar dynamic results with **BODY GOLD** Chromium Picolinate. In fact, if you've got some extra weight around your waist or hips, or more jiggle than yesteryear, you could see changes in yourself you've only dreamed of before now!

I Want Results Like That! How Do I Know I'll Get The Same Product That Was Used In The Studies?

BODY GOLD Chromium Picolinate is made to the *exact specifications* of the capsules used in both of the university studies we've talked about—as well as in hospital studies which proved other exciting health benefits of this nutrient. Chromium Picolinate is patented by the United States Government (#Re.33,988), and is the form of chromium most recommended by health professionals.

BODY GOLD will refund the price of the first bottle purchased of any **BODY GOLD** product with which you are not entirely pleased. Subsequent purchase and/or further use of the same product implies satisfaction, however, and those purchases may not be refunded.

Complaint

EXHIBIT D

L-CARNITINE

A powerful fat metabolizer praised by athletes for its ability to transport fatty acids more efficiently to the body's "fat burning energy centers" (mitochondria). By improving your fat metabolism, L-Carnitine can enhance your efforts at fat loss, weight loss, and muscle toning.

Our Super Fat Burner Formula (see brochure cover) currently contains 50 milligrams of L-Carnitine. Nutritional experts recommend up to 1,000 milligrams daily, depending on your particular fitness goals.

L-Carnitine is frequently sold in 500 milligram capsules, and it can be costly! We are offering 250 milligram capsules for your convenience in determining your own personal needs without expensive, wasteful over-supplementation.

Our suggested use is 1-4 capsules daily. For superior fat-burning ability, combine with our suggested amounts of BODY GOLD Super Fat Burner Formula and Chromium Picolinate.

- * Product #LC-100
L-Carnitine, 250 mgs.
100 capsules
Price: \$27.95

"Fat Burner" Confusion??

Each of our "fat-burning" products is different from the other and each contributes to better fat metabolism. For maximum fat burning ability, therefore, we recommend all three products. Below is a quick reference guide to each:

CHROMIUM PICOLINATE: A proven fat-burner with many other general health benefits. An essential mineral which should be a lifelong supplement.

L-CARNITINE: An amino acid complex needed for converting fat into energy.

SUPER FAT BURNER FORMULA: A combination of nutrients and herbs effective in promoting fat metabolism and easing water retention.

OLD AND NEW:

Dear Friends:

Some say good health is a gift. Taking care of yourself can make that gift last a lifetime. BODY GOLD products are like the "Midas Touch of Good Health" because of the many ways they can benefit you and your family.

The "gold" in "BODY GOLD" is Chromium Picolinate. So strongly do we believe in the importance of this amazing nutrient for good health, you will find it in many of our products. It can be an impressive addition to intelligent eating and exercise habits. And it can turn your life around with an array of astonishing benefits to your health and appearance.

BODY GOLD is an exclusive, carefully formulated line of safe, effective, quality products. We pride ourselves in fast, reliable service. There is no greater reward to us than our growing number of satisfied repeat customers. To all of you: thank you for your valued patronage. And to all of our new BODY GOLD friends, a hearty "welcome!"

Victoria Bie
Owner

BODY GOLD
5930 La Jolla Hermosa Avenue
La Jolla, CA 92037
619-459-2661

© Copyright 1993 BODY GOLD

**MONEY-BACK
GUARANTEE**

BODY GOLD will refund the price of the first bottle purchased of any BODY GOLD product with which you are not entirely pleased. Subsequent purchase and/or further use of the same product implies satisfaction, and those purchases may not be refunded.
Product quality is unconditionally guaranteed at all times.

EXHIBIT D

Body Gold™

"The Midas Touch of Good Health"

PRODUCT GUIDE

Nutritional Supplements for Weight Control,
Strength and General Fitness Programs



FOR ACCELERATING FAT LOSS AND ENHANCING MUSCLE DEFINITION

Get enhanced results from your personal exercise or fitness program.

Originally formulated for weight-training programs, Super Fat Burner Formula provides a combination of effective lipotropic and ergogenic ingredients in capsule form to take before exercise or at bedtime. You'll trim down and tone up as you burn fat and keep vital muscle.

Suggested Use: 2 to 4 capsules daily.

Contains: Choline, Inositol, L-Carnitine, Beta-Sitosterol, Betaine HCl, L-Taurine, Buchu Leaves, Hops, Uva Ursi, Vitamin B6.

(LOOK INSIDE for special savings on our fat burner combination: Super Fat Burner Formula and Chromium Picolinate.)

- * Product #FB-120
Super Fat Burner
Formula
120 capsules/bottle
Price: \$16.95

*** SAVE *****ON QUANTITY
PURCHASES**

WHEN YOU BUY FOUR
OR MORE BOTTLES

SEE OTHER SIDE

EXHIBIT D

Superior Nutritional Insurance



Our exclusive
multivitamin/mineral
formula created
with pride and care for
BODY GOLD customers

Rich in the vitamins and minerals important to the preservation of your good health, "24K" includes 200 micrograms of Chromium Picolinate.

"Supermarket vitamins" such as Centrum® and Theragran-M® seldom offer the complete spectrum of nutrients so essential to your good health, abundant energy, and overall well-being. Among the vital nutrients supplied by "24K" are:

- ✓ a rich supply of the all-important B vitamin complex—helping your body deal with day-to-day stress
- ✓ the protective anti-oxidants—natural defenses against harmful effects of air pollution, cigarette smoke, etc.
- ✓ calcium and magnesium in perfect balance for optimal effectiveness—protection for women from bone loss and osteoporosis.
- ✓ 200 micrograms of Chromium Picolinate—for efficient functioning of the hormone insulin.

Just four tablets a day fortify your diet with:

		% of USRDA
Vitamin A	(Beta Carotene)	15,000 IU 300
Vitamin C	(Ascorbic Acid)	180 mg 300
Vitamin E	(d-alpha Tocopheryl)	90 IU 300
Vitamin D	(Cholecalciferol)	200 IU 50
Vitamin B1	(Thiamine HCl)	4.5 mg 300
Vitamin B2	(Riboflavin)	5.1 mg 300
Vitamin B6	(Pyridoxine HCl)	8 mg 400
Vitamin B12	(Cobalamin Concentrate)	24 mcg 400
Vitamin K	(Phytonadione)	100 mcg -
Folic Acid	(Folic Acid)	400 mcg 100
Niacin	(Nicotinamide)	40 mg 200
Pantothenic Acid	(Calcium Pantothenate)	30 mg 50
Calcium	(Calcium Carbonate)	500 mg 50
Magnesium	(Magnesium Oxide)	250 mg 60
Zinc	(Zinc Picolinate)	15 mg 100
Iron	(Ferrous Fumarate)	53 mg 30
Manganese	(Manganese Gluconate)	5 mg -
Copper	(Copper Gluconate)	3 mg 150
Selenium	(Sodium Selenate)	200 mcg -
Chromium	(Chromium Picolinate)	200 mcg -
Iodine	(Potassium Iodide)	75 mcg 50
Molybdenum	(Sodium Molybdate)	150 mcg -
Silicon	(Magnesium Triallate)	20 mg -
Rutin		200 mg -

• Product #K-180
180 tablets/bottle
Price: \$14.95

The Fitness Essential

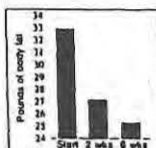


CHROMIUM PICOLINATE

Less body fat • More muscle • Lower cholesterol • Blood sugar control • Weight loss

The headline-making results of clinical and university studies with Chromium Picolinate have been reported in MUSCULAR DEVELOPMENT, USA TODAY, COSMOPOLITAN, LADIES' HOME JOURNAL, LONGEVITY, MUSCLE & FITNESS, PREVENTION, and many other publications.

In the 1988-89 groundbreaking studies, people given 200 micrograms of Chromium Picolinate daily lost 22% of their body fat in six weeks! Moderate exercise was taken; no dietary restrictions were imposed.

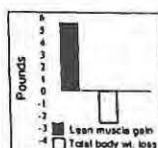


Fat loss was dramatic. Unhealthy body fat decreased by 17% in only 2 weeks and continued to an average 22% loss at the end of the 6-week study.

These and subsequent published studies show that Chromium Picolinate:

- increases body fat metabolism
- lowers elevated cholesterol levels
- builds stronger, leaner muscle
- regulates blood sugar
- promotes longer life span in laboratory rats

Chromium is an essential trace mineral which functions as a cofactor for insulin. It is essential for efficient metabolism of sugar, fat, protein, and carbohydrate. Chromium Picolinate is the most bioactive form of chromium available today.



Weight loss occurred even as muscle was enhanced. Fat loss coupled with improved muscle tone and mass causes significant "inch loss" in many people.

TWO POTENCIES
QUANTITY SAVINGS

BODY GOLD 200-microgram Chromium Picolinate provides the amount of chromium used in the fat loss studies cited here. Subsequent studies show 400 micrograms daily enhance results in many people. Athletes and body-builders often obtain their greatest results from 400 micrograms, or more.

200 mcg. CAPSULES
ORIGINAL RESEARCH
POTENCY
• Product #CR-200
60 capsules
Price: \$10.95

400 mcg. CAPSULES
DOUBLE POTENCY
QUANTITY SAVINGS
• Product #CR-400
120 capsules
Price: \$35.95

SPECIAL OFFER ON 200 mcg. CAPSULES
BUY 5 BOTTLES, GET A 6TH ONE FREE
• Product #CRS-6 60 capsules/bottle
Price: 6 bottles, only \$54.75

Combined Fat Loss Power
At Special SavingsSuper
FAT BURNER + CHROMIUM
FORMULA PICOLINATE
(200 MCG.)

A dynamic combination of fat burners at special savings. Our fat-loss Dual-Pak provides the clinically proven fat loss benefits of Chromium Picolinate and the demonstrated effectiveness of Super Fat Burner Formula.

DUAL-PAK SAVINGS: \$4.00

• Product #DP-30D
Dual-Pak: Super Fat Burner, 120 capsules
Chromium Picolinate, 60 capsules
Price: \$23.90

Chromium Picolinate is an extremely safe and non-toxic nutritional supplement. Combining several BODY GOLD products containing Chromium Picolinate in the suggested amounts is entirely safe.

Complaint

123 F.T.C.

EXHIBIT D

Your Daily Energizer

A safe, natural energy formula to provide extra "zip" in your busy life.

Whether you're facing long, hectic hours in the workplace, keeping pace on campus with your studies and school activities, tackling rush-hour traffic or energy draining chores-about-town, or keeping up with the toddler in the house, Daily

Daily
ENERGY
Formula

Energy Formula can give you the energy boost to see you through.

This is not a caffeine-loaded formula that will play havoc with your nervous system. Daily Energy Formula contains NO CAFFEINE and provides the "gentle" ingredients needed for efficient energy production.

Suggested use: 1 to 3 capsules daily for that extra dash of energy when you need it most!

Three capsules contain:

Siberian Ginseng	300	mg
Bee Pollen	200	mg
Royal Jelly	200	mg
Gota Kola	100	mg
Chromium Picolinate	100	mcg
Cayenne	75	mg
Vitamin B12	100	mcg
Niacin	50	mg
Folic Acid	100	mcg
Vitamin B5	100	mg

* Product #EN-90
Daily Energy Formula
90 Capsules/bottle
Price: \$9.95

BODY GOLD
Customers Write...

About Chromium Picolinate:

"This is my second order. I've lost 5 pounds and almost 2 jeans' sizes. I've got about 10 friends who will be sending orders! Great stuff."

R.N., Bucyrus, NY

"I've had incredible results with this product."

M.C., Columbia, SC

"It has definitely decreased my interest in sugar, specifically chocolate. Thanks so much!"

Bonnie Murphy, Central Point, OR

"I can't believe how much more energy I have. I've lowered my cholesterol by about 30 points. I've lost weight."

*Anonymous (by request),
River Falls, WI*

"Initially I lost 9 lbs. in 11 days. I am hypoglycemic — which has virtually been totally controlled, no headaches — no sugar highs & lows. I love BODY GOLD!"

D.T., Flushing, NY

"Results are fantastic! I am very happy with it."

V.L., Cape Coral, FL

**About 24K with
Chromium Picolinate:**

"I (lost) 10 lbs., and am able to maintain. BODY GOLD does make me feel better."

Diane Wiles, Everett, WA

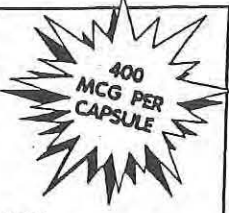
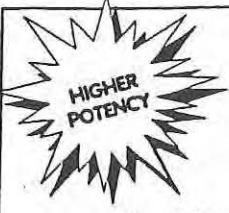
"It makes me feel better. They (the tablets) are easy to take. I noticed I've lost inches."

M.R.Y., Daytona Beach, FL

"I am on a very strict diet, find it easier to stick with it. Also have control over hypoglycemia, never could get control before."

L.P., Easley, SC

EXHIBIT E



DOUBLE THE CHROMIUM POWER


ECONOMICAL PRICING

QUANTITY SAVINGS

If you want 400 micrograms of chromium a day, you can SAVE DRAMATICALLY and enjoy one-a-day convenience.

Recent clinical studies have used 400 micrograms of chromium to produce excellent weight-loss and fat-loss results. Your reward can be substantially greater fitness benefits when you **DOUBLE THE CHROMIUM POWER**. And Chromium Picolinate is perfectly safe at these reasonable, healthy amounts.

BODY GOLD Chromium Picolinate "400" provides a four-month supply (120 capsules) of 400 microgram capsules in one convenient bottle. You pay only \$35.95. That's...



LESS THAN \$9.00 A MONTH
for
DOUBLE THE CHROMIUM POWER!

TO ORDER:
Please see Item #CR-400 on order form
BODY GOLD, 5930 La Jolla Hermosa, La Jolla, CA 92037

EXHIBIT E

Complaint

123 F.T.C.

EXHIBIT F

LONG-LIFE RESOURCES

Fitness
20's + Fat4 1/2 x 6 3/4
4 5/16 x 6 9/16

on drugs, splints, surgery and diet, they offer a standard by which readers can gauge the quality of care given by their own physicians. In fact, if the book has a single Big Message, it is that a patient's active partnership and open communication with his or her doctor is critical to successful treatment. Pisetsky expressly encourages readers to discuss the book's perspective with their physician.

The book contains a thorough

chapter on the role that genetics may play in treatment and prevention and another on the future of research. A discussion of unproven, unconventional remedies is skeptical but fair-minded, pointing out that some now-standard treatments—such as gold injections for rheumatoid arthritis—were once dismissed as quackery. There is advice on how to decide if a new treatment is snake oil or a potential godsend your doctor just hasn't

heard about. Some tips on how to ferret out the unscrupulous: The treatment is not mentioned in conventional medical literature; the doctor wants cash; the cure is a "secret"; results will come overnight; the doctor has set up shop in the Bahamas or some other remote locale.

Behaving around food. In the real world, there is no secret formula that will whisk pounds away and keep us slim, fit and young-looking forever. Diet mogul Jenny Craig knows that. Although her weight-loss centers offer a nutritional, low-fat and low-cal diet plan, the trick, she says, is to alter your eating behavior. After nine years, 650 centers worldwide and with plans for another 500 or so in the future, Craig and her crew have a well-honed knack for coaching people in goal-setting and stick-to-itiveness. Now you don't have to join one of her centers to benefit from all that experience. Her weight-loss philosophy and detailed instructions for using it are available in *Jenny Craig's What Have You Got to Lose? A Personalized Weight-Management Program*, written in collaboration with Brenda L. Wolfe, Ph.D. (Villard Books, \$20).

More a workbook than a weight-loss tome, the manual does not focus on the "D" word. Rather, it emphasizes managing your weight before and after the pounds roll off. The book is sprinkled with inspiring testimonials from slimmed-down clients and includes easy-to-follow recipes for all the dishes included in the Jenny Craig meal plan.

Boosting self-esteem is at the core of Craig's method. She claims she went into the diet business to promote healthy life-styles, not to encourage obsessive concern with body image, and her earnestness shows on virtually every page. She emphasizes that there are no shortcuts if your goal is permanent weight loss; hence her program offers no "maps to the Fountain of Youth." But it can help you navigate your way to healthier eating—and a happier long-term relationship with the bathroom scale.

You've heard about it. You've read about it.

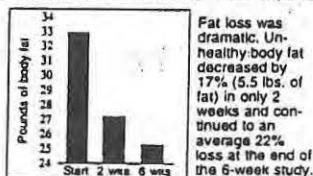
CHROMIUM PICOLINATE for LESS FAT AND MORE MUSCLE

THE NEWS:

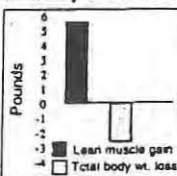
UNIVERSITY STUDIES identify CHROMIUM PICOLINATE as a "trigger" for fat loss and lean muscle enhancement.

THE FACTS:

People given Chromium Picolinate lost 22% of their body fat in six weeks. Moderate exercise routines were followed; no dietary restrictions were imposed.



Fat loss was dramatic. Unhealthy body fat decreased by 17% (5.5 lbs. of fat) in only 2 weeks and continued to an average 22% loss at the end of the 6-week study.



Weight loss occurred even as muscle was enhanced. Fat loss, coupled with improved muscle tone and mass, causes significant "inch loss" in many people.

THE "TALK":

From radio and TV talk shows to "professional" dieters who have despaired of losing fat and inches, the talk is about Chromium Picolinate. About a smaller dress size or belt size. About how this amazing nutrient is building leaner, stronger bodies for people who have "tried it all" and failed.

THE PRODUCT:

BODY GOLD™ Chromium Picolinate capsules are made to the exact specifications of those used in the studies (Bemidji State University, 1988/89). Each capsule contains 200 micrograms of biologically active chromium from Chromium Picolinate (U.S. patent 4,315,927). One capsule daily produced scientifically documented weight loss, fat loss and lean muscle enhancement. Your bottle of **BODY GOLD** contains 60 capsules. **USE BODY GOLD AS A COMPLEMENT TO ANY WEIGHT LOSS OR EXERCISE PROGRAM** for a leaner, trimmer, healthier YOU!

Satisfaction Guaranteed!

Please send check or money order (no C.O.D.s) to: **BODY GOLD**, 5920 La Jolla Hermosa, Dept. LO-22, La Jolla, CA 92037

Please rush me _____ bottles of "BODY GOLD" @ \$10.95 ea = \$ _____
 Name: _____ Shipping = \$ 2.50
 Address: _____ TOTAL = \$ _____
 City: _____ State: _____ Zip: _____

EXHIBIT G

AVERI
Malibu's Resident Psychic
Accurate & Astounding
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Readings By Appointment



Averi Torres

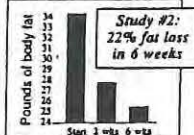
For more than two decades, thousands of people have sought AVERI's guidance and motivation for career and personal excellence. Now you too can join with two recent Presidents, celebrities and ordinary people with extraordinary dreams who have been enriched by AVERI's powerful insights for peace, love, prosperity and good health.

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Clients Worldwide
 MC/Visa Seminars Radio/TV

22% LESS BODY FAT
IN SIX WEEKS
with Chromium Picolinate

Numerous studies now show that supplemental CHROMIUM PICOLINATE promotes fat loss and increases lean muscle. 200 micrograms taken daily can offer dramatic fitness benefits.



Men and women across the country are talking about the amazing benefits of this safe, essential nutrient:

WEIGHT LOSS • FAT LOSS
MORE LEAN MUSCLE

BODY GOLD is made to the exact specifications of the capsules used in the study cited above. Each bottle of 60 capsules is a 3-month supply.

MONEY-BACK GUARANTEE
 Checks or money order only. Canada: U.S. \$1 mail.
 Please rush _____ bottles of BODY GOLD
 @ \$10.95 each - \$2.50 total delivery

Name _____

Address _____

City _____ State _____ Zip _____

BODY GOLD, 5930 La Jolla Hermosa,
 Dept. L.O.-3, La Jolla, CA 92037

patients stricken by hereditary disorders. Touched by their suffering and exhilarated by the sheer challenge, Collins began his quest to unlock the secrets of our most deadly inherited disorders. Five years later, the geneticist's "chromosome jumping" technique, an ingenious shortcut to locating a gene along a lengthy stretch of DNA, proved instrumental in pinpointing the gene that causes cystic fibrosis, the most common inherited disease among whites. Only a year later, he nabbed the culprit for neurofibromatosis, which causes potentially fatal nervous system tumors. Then, early this year, Collins' team helped pin down the elusive gene for Huntington's chorea, a deadly neurodegenerative disease that typically strikes in middle age.

After James Watson's departure, Collins stepped naturally into the top job at the genome project—the full-pressure effort to meticulously map all 50,000 to 100,000 human genes and decipher their chemical structures. "He's one of a new breed of physician-scientists," former Michigan colleague Gary Nabel, M.D., Ph.D., told the Boston Globe. "Very rapidly, basic work in the laboratory is being translated into clinical medicine, and that's what makes someone like Francis a more effective leader."

Indeed, it is Collins' ability to combine his pursuit of things scientific with human empathy that makes him such a prize to his colleagues and patients alike. Thomas Gelernter, M.D., chairman of human genetics at Michigan, says that in the highly competitive world of biomedical research, Collins is one-of-a-kind. "He's a warm human being. Other people enjoy his success." A Collins patient says, "You get a feeling of total caring. He talks to every patient at a level he can accept." And what does Collins think of his new position? "I feel as if I have been preparing for this my whole life," he says.

Although currently on hiatus from his work with patients, the new director says, "I will certainly be emphasizing more than has been done in the past, the medical consequences of the genome project. The public is paying more and more attention to the medical consequences of the genome project."

The price of the product is \$2.50 per bottle. Please allow 4-6 weeks for delivery. Please allow 4-6 weeks for delivery.

Revitalize Your Body!



Healthscope 93

Get your Healthscope from world renowned astrologer, **Joanna Martine Woolfolk**, best selling author of **The Only Astrology Book You'll Ever Need** (Scarborough House).

CALL
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 (52 first min./\$1 ea. addl. min.)

And discover the best celestial strategies to revitalize your body. Learn to intensify and preserve your longevity by using the secrets of the zodiac.

18 or over. Touch-tone phone only. Sponsored by Pure Ent., Box 160, Halfway, CA 94028.

Complaint

123 F.T.C.

EXHIBIT H

HEALTHY GETAWAYS

You're eating smarter
and exercising more.

Now you need
Body Gold™

No more yo-yo dieting. You're getting smarter and your health is important to you.

You're changing your lifestyle and looking for the results. Now you need **BODY GOLD Chromium Picolinate.**

Join women and men across the country who are enjoying exceptional results from their fitness efforts with **BODY GOLD.** Mold yourself a sleek, new figure with the lasting benefits of this amazing nutrient!

22% LESS BODY FAT

In a breakthrough university study with Chromium Picolinate, fat loss was dramatic:



Unhealthy body fat decreased 17% in only 2 weeks and continued to an average 22% loss at the end of the 6-week study.

In only six weeks, participants given Chromium Picolinate lost 22% of their body fat! Happy **BODY GOLD** customers enthusiastically confirm these exciting fat loss and weight control benefits.

Discover the final answer to getting and keeping a healthier, stronger, slimmer YOU. Add **BODY GOLD Chromium Picolinate** to sensible eating and exercising habits. Then...

BE READY FOR SOME DYNAMITE RESULTS!



BODY GOLD is made to the exact specifications of the capsules used in the studies cited above. Each bottle of 60 capsules is a 2-month supply.

MONEY BACK GUARANTEE

Please run bottles of **BODY GOLD** @ \$17.95 each = \$2.50 total. Delivery. Check or money order only.

Name _____

Address _____

City _____ State _____ Zip _____

Phone () _____

Send me _____

NEAR HISTORIC CHARLESTON, SC



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Featuring miles of beaches, eight championship golf courses, tennis, bike trails, boating, shopping and dining. All in a semi-tropical climate only minutes from Historic Charleston.

Site of the 1991 Ryder Cup Matches

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SEABROOK 1-800-845-2233

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EXTENSION 774

NAME _____

ADDRESS _____

CITY, STATE, ZIP _____

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TWO BEACHWALKER SUITE 374 KIAWAH ISLAND, SC 29545

hap-pe-tite

(hap'itit) n. 1. a desire or longing for a fun, humorous, healthy retreat where you can satisfy your craving for pleasure. 2. to hunger for contentment and understanding of your individual needs and goals.

syn. Lake Austin Resort.

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Overcoming Overeating Workshop

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May 31 - June 7, 1992

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plus much more!

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THE PLANTATION SPA

A Hawaiian spa resort for body and mind

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Not for just a day,
Not for just a year...*

The Heartland will teach you realistic ways to make your lifestyle kinder to your mental and physical health. We offer a wide range of exercise activities and pampering services. At our peaceful, country estate, we'll help you change for the better -

for always.



THE HEARTLAND
A HEALTH AND FITNESS RETREAT

Just 80 miles south

of Chicago

For information

call (800) 422-0307

Complaint

EXHIBIT I

You've heard about it. You've read about it.

CHROMIUM PICOLINATE

for

LESS FAT AND MORE MUSCLE

The hottest topic in health and fitness is Chromium Picolinate! Numerous studies now show that supplemental Chromium Picolinate promotes fat loss and increases lean muscle. 200 micrograms taken daily can offer dramatic fitness benefits!

1989, Barabji State University, Minnesota

People taking Chromium Picolinate lost 23% of their body fat in only six weeks in a 1989 university study. Since then, numerous studies and millions of people have confirmed the exciting benefits of this safe, essential nutrient. Men and women across the country are talking about:

LESS BODY FAT • WEIGHT LOSS • "TNC LOSS"
MORE ENERGY • MORE LEAN MUSCLE
GREATER STAMINA • APPETITE CONTROL
LESS DESIRE FOR SWEETS

BODY GOLD™ Chromium Picolinate capsules are made to the exact specifications of those used in the study cited above. Each capsule contains 200 micrograms of chromium from USDA-patented Chromium Picolinate. One capsule daily produced scientifically documented weight loss, fat loss and increased lean muscle. Your bottle of BODY GOLD contains 60 capsules.

ORDER TODAY • MONEY-BACK GUARANTEE
 For fast delivery, send check or money order today to: BODY GOLD,
 5930 La Jolla Hermosa, Dept. CL-93, La Jolla, CA 92037

Please rush me _____ bottles of "BODY GOLD" @ \$10.95 ea. = \$ _____
 Name: _____ Shipping = \$ 2.50
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 City: _____ State: _____ Zip: _____ No C.O.D.s. Canada U.S. \$ only (CL-93)

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The High-Tech Weight-Loss System.

There are weight-loss programs for the average individual. And then there's NordicSport™ ski from NordicTrack. The high-tech, world-class way to lose weight and keep it off.

Weight loss never felt so good. Our state-of-the-art graphite composite construction allows the NordicSport™ ski to move and react to your body's motion for the most authentic sport simulation and the most vigorous cardiovascular workout. With the patented lock-and-release system, it's a smooth as butter, yet real challenge - a full-body workout the snow is missing.

And it's built to last. A 10-year warranty is included. That's more than you would get from any other exercise machine. And it's built to last. It's built to last. It's built to last.

nordicsport
 by NordicTrack

BEST OF ALL...IT'S FROM NORDICTRACK! 30-DAY IN-HOME TRIAL

CALL FOR A FREE VIDEO AND BROCHURE.
1-800-445-2231 EXT. 27713
 ON NORDICTRACK, DEPT. 27713, 200 PEARSON BLVD., CHICAGO, ILL. 60638-2205

Keep All Your Kitchen Knives Sharp with Crick Stick Sharpeners

Restore and Revive Damaged Blades with a Lansky Multi-Angle Sharpening Kit

Write for free catalog of the world's most complete sharpener line.

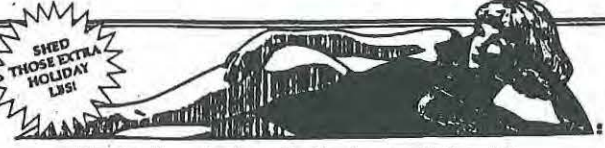
LS LANSKY SHARPENERS

Lansky Sharpeners, Dept. 444, 444
 Dept. 20, 3040 New York Ave., New York, NY 10002

Complaint

123 F.T.C.

EXHIBIT J



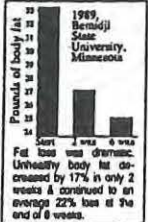
You've heard about it. You've read about it.

CHROMIUM PICOLINATE

for

LESS FAT AND MORE MUSCLE

The exciting news in weight loss and fitness is Chromium Picolinate! Numerous studies now show that supplemental Chromium Picolinate promotes fat loss and increases lean muscle. 200 micrograms taken daily can offer dramatic fitness benefits!



1989, Bemidji State University, Minnesota

Weight loss was dramatic. Unhealthy body fat decreased by 17% in only 2 weeks & continued to an average 22% loss at the end of 6 weeks.

People taking Chromium Picolinate lost 22% of their body fat in only six weeks in a 1989 university study. Since then, numerous studies and millions of people have confirmed the exciting benefits of this safe, essential nutrient. Women across the country are talking about:

LESS BODY FAT • WEIGHT LOSS • "TCH LOSS"
MORE ENERGY • MORE LEAN MUSCLE
GREATER STAMINA • APPETITE CONTROL
LESS DESIRE FOR SWEETS

BODY GOLD™ Chromium Picolinate capsules are made to the exact specifications of those used in the study cited above. Each capsule contains 200 micrograms of chromium from USDA-patented Chromium Picolinate. One capsule daily produced scientifically documented weight loss, fat loss and increased lean muscle. Your bottle of **BODY GOLD** contains 60 capsules.

ORDER TODAY • MONEY-BACK GUARANTEE

For fast delivery, send check or money order today to: **BODY GOLD**,
 5930 La Jolla Hermosa, Dept. CO-14, La Jolla, CA 92037

Other fine BODY GOLD products:
L-Carnitine, Super Fat Burner Formula, Daily Energy Formula

Please rush me _____ bottles of "BODY GOLD" @ \$10.95 ea. = \$ _____

Name: _____ Chromium Picolinate Shipping = \$ 2.50

Address: _____

City: _____ State: _____ Zip: _____

TOTAL = \$ _____

No C.O.D.s. Canada: U.S. \$ m.o. only

CO-14




EXHIBIT J

Complaint

EXHIBIT K

**BEAT HOLIDAY
WEIGHT
GAIN!**



CHROMIUM PICOLINATE for LESS FAT AND MORE MUSCLE

The exciting news in health and fitness is Chromium Picolinate! Numerous studies now show that supplemental Chromium Picolinate promotes fat loss and increases lean muscle. 200 micrograms taken daily can offer dramatic fitness benefits!

People taking Chromium Picolinate lost 22% of their body fat in only six weeks in a 1989 university study. Since then, numerous studies and millions of people have confirmed the exciting benefits of this safe, essential nutrient. Men and women across the country are talking about:

**LESS BODY FAT • WEIGHT LOSS • "INCH LOSS"
MORE ENERGY • MORE LEAN MUSCLE
APPETITE CONTROL • LESS DESIRE FOR SWEETS**

BODY GOLD™ Chromium Picolinate capsules are made to the exact specifications of those used in the study cited above. Each capsule contains 200 micrograms of chromium from USDA-patented Chromium Picolinate. One capsule daily produced scientifically documented weight loss, fat loss and increased lean muscle. Your bottle of BODY GOLD contains 60 capsules.

ORDER TODAY • MONEY-BACK GUARANTEE

For fast delivery, send check or money order today to: BODY GOLD,
5930 La Jolla Hermosa, Dept. CL-113, La Jolla, CA 92037

Please rush me _____ bottles of "BODY GOLD" @ \$10.95 ea = \$ _____
Name: _____ Shipping = \$ 2.50
Address: _____ TOTAL = \$ _____
City: _____ State: _____ Zip: _____ No C.O.D.s. Canada: U.S. \$ mail only CL/13

Complaint

123 F.T.C.

EXHIBIT L

New Women 8/94



Body Gold™

Nutritional products for people **SERIOUS** about WEIGHT LOSS and WEIGHT MANAGEMENT

Lost 13 lbs. and feel great—thanks to Body Gold!

G.B. Mohrsville, PA

Since I started Body Gold products I have lost a total of 36 inches and 64 pounds. I'm a proud Body Gold user.

Karen Suleiman, Livonia, MI

I've lost 20 pounds so far, and many, many inches!! I recently added "24K" to my regimen and it's even better. I feel terrific!

Jennifer Papagno, Marlboro, MA

Body Gold has become an important part of my daily life. I no longer crave chocolate or any sweets, and my appetite has decreased also. I've lost inches all over.

Joan Decker, Troy, NY

I saw inch loss in just a few days, and also a loss of appetite. I have more energy than ever.

N.W. Wichita, TX

Your product (Chromium Picolinate) is so great. In 2 weeks I've lost inches already. I haven't eaten or craved sweets. Thank you so much.

S.C. Santa Rosa, CA

You have made me a believer. I could not get any of my dresses to fit when I needed to attend a special event. I started the 200 mcg chromium that day. One month later I can once again wear my clothes. I feel great! Thank you!

Marcy Baker, Bend, OR

This is the best thing I have ever tried and got results so fast! I have several friends as well as myself who have lost 20 pounds or more.

M.G. Rocky Mt., NC

I've lost lots of inches and 2 dress sizes!

G.H. Columbus, OH

Body
Gold
Customers
Write:



I feel great since starting Daily Energy Formula and I have lost 10 lbs. in the past month since starting Chromium Picolinate.

M.S. Madison Hts., VA

The products you are offering are fantastic. After using Body Gold there is no need to try anything else. I love it! It works!

Bonnie Stokes, Charlottesville, VA

I tried your Dual-Pak of Super Fat Burner Formula in combination with the Chromium Picolinate, and I AM HOOKED! I noticed immediate and dramatic fat loss, while I've noticed more muscle. I've finally managed to lose those impossible last 5 lbs. almost effortlessly.

K.M. Edgewood, NM

I have been particularly pleased with the Super Fat Burner Formula. I had a baby and within 2 months I have lost the 40 lbs. gained and have rebuilt the muscle definition I had lost during the pregnancy.

Carol Leigh Henderson, Stone Mt., GA

I lost 7-1/2 lbs. in 2 weeks with absolutely no change in diet—I fed better and want less food. I have found determination and excitement I haven't felt in years. Thanks!

Mary Gutz, Los Angeles, CA

I love your products! Adding the L-Carnitine has been really effective. It has dramatically improved my athletic performance and increased overall stamina. Your products give me the fuel I need.

Gail Smart, W. Medford, MA

I've lost 10 pounds without trying to diet with this product. I feel great!

Sally Womer, Friendswood, TX

FOR FASTEST SHAPE-UP SUCCESS WE HIGHLY RECOMMEND COMBINING OUR:
Fat Loss Dual Pak (#DP-30D) and L-Carnitine (#LC-100)

BODY GOLD, 5470 La Jolla Hermosa Avenue, Dept. NW-34, La Jolla, CA 92037

ORDER TODAY!

MONEY BACK GUARANTEE

ORDER TODAY!

PLEASE RUSH MY ORDER

#CR-200 Chromium Picolinate

#CR-400 Chromium Picolinate

#FB-120 Super Fat Burner Formula

#DP-30D Fat Loss Dual-Pak (Save \$4.00)

#SE-300 Daily Energy Formula

#LC-100 L-Carnitine

#K-150 "24K" Multi-Vitamin/Mineral Formula

\$14.95 ea = \$

\$29.95 ea = \$

\$29.95 ea = \$

\$29.95 ea = \$

\$29.95 ea = \$

\$29.95 ea = \$

\$29.95 ea = \$

Name _____

Address _____

City _____

State _____ Zip _____

Check or money order only

Include \$5.00 money order fee (if applicable)

VISA & MASTERCARD
1-800-808-8448

orders only, please # order by item #

EXHIBIT M

troubled by frizzy hair?

Ouidad has been named by Vogue one of the top stylists in America and the one best at caring for frizzy hair. She works wonders in the quiet confines of her NYC brownstone penthouse salon; which also offers luxurious facials, manicures, pedicures and waxing. Ouidad's Deep Treatment conditioner, a lotion for frizzy hair (seen on Sally Jessy Raphael), has been featured by beauty editors in Allure, Elle, T&C, Harper's Bazaar, and dozens of others, making the salon a haven for those with frizzy, curly hair. The Deep Treatment can be ordered by mail. For a free brochure, call (800) 677-HAIR or write/visit the salon at 846 Seventh Ave., NY, NY 10019.



2 oz. bottle, \$22.50 ppd.

Fresh Start, Clean Finish

Make BreathAssure a permanent addition to your daily beauty regimen. BreathAssure, an all-natural blend of sunflower and parsley seed oils, works with your digestive system to give you clean breath. Just swallow 2-3 capsules with liquid; BreathAssure is guaranteed to tackle even the spiciest foods. So eat whatever you want, whenever you want to. Just use BreathAssure and you won't need to worry about your breath—morning, noon or night! Credit card orders call 1-800-603-1500. Or send check/mo to BreathAssure, Dept. 673, 18034 Ventura Blvd., Encino, CA 91316. Only \$19. for 4 packs (200 capsules) plus \$3 s/h. CA residents add \$1.65 tax. 30-day money back guarantee. In Canada, call 1-800-668-8968.



The Shape You're In

Championship Blocking

A sports sunblock needs to absorb quickly into your skin so it won't interfere with your grip or run into your eyes. It has to be waterproof and sweatproof for up to eight hours so there's no hassle with reapplying. Hawaiian Tropic Sport Sunblock delivers all this and more in its 15, 30 or 45 SPF formulas.



SCALED DOWN BEAUTIFUL

A powerful weight loss combination with CitriGold™

CitriGold™ is the weight-loss aid that combines the latest, most potent ingredients to help you:

- Lose weight
- Reduce body fat
- Control your appetite

CitriGold contains Garcinia cambogia (HCA) from Citrin® and Chromium Picolinate, two breakthrough ingredients in weight control. Add CitriGold to your weight loss and exercise program for a leaner, slimmer, sleeker body than you would have thought possible. One-month supply only \$24.95. Money Back Guarantee.

Special Offer: Daily Energy Formula, an \$11.95 value, only \$9.95 with CitriGold purchase from this ad.

Credit card orders: 1-800-808-8448 (24 hrs.) or send order form with payment to: Body Gold™, 5930 La Jolla Hermosa Ave., Dept. S-55, La Jolla, CA 92037.



PLEASE RUSH _____ bottles CITRIGOLD™ @ \$24.95 ea. = \$	
OR _____ CITRIGOLD™ + Daily Energy Combos @ \$34.90 ea. = \$	
Shipping = \$	
TOTAL = \$	
Name _____	SHIPPING 1 30. 62.50
Address _____	2-4 316. 63.50
City _____ State _____ Zip _____	5 or more 14. 78
	WEEKLY SERVICE 18. 00

your master plan for success in life

Are you tired of wondering or worrying about Love? Career? Family? Friends? Wealth? Or even Health? Then, join the crowd—the crowd calling the Psychic Friends Network™, that is! Where a certified Master Psychic can reveal your "Master Plan for Success in Life"! The Master Psychic Master Plan is unlike any other psychic reading ever offered. Most psychic readings capture a moment in time at best. But, with a Master Psychic Master Plan, you get comprehensive, in-depth guidance about any—or every—area of your life. In fact, your Master Psychic Master Plan actually advises you step by step on the correct course to take to help you achieve the lasting happiness you desire. And deserve! So stop dreading dead ends and start living the life of your dreams. Call now for your Master Plan for Success in Life. Because with a Master Psychic Master Plan, you, at last, can know tomorrow, today!

Call now for your very own Master Psychic Master Plan! 1-900-454-4330. (Only \$3.99 per minute. Must be at least 18 years of age.)

Note: there's a fragrance for all your moods: Vanilla Fields from Corey, Classic Gardens by Dana, or Chantilly... from Sebastian. Everything you need in haircare—slim down with CitriGold and Citrin™.

DECISION AND ORDER

The Federal Trade Commission having initiated an investigation of certain acts and practices of the respondent named in the caption hereof, and the respondent having been furnished thereafter with a copy of a draft complaint which the Denver Regional Office proposed to present to the Commission for its consideration and which, if issued by the Commission, would charge respondent with violation of the Federal Trade Commission Act; and

The respondent, her attorney, and counsel for the Commission having thereafter executed an agreement containing a consent order, an admission by the respondent of all jurisdictional facts set forth in the aforementioned draft of the complaint, a statement that the signing of said agreement is for settlement purposes only and does not constitute an admission by respondent that the law has been violated as alleged in such complaint, or that the facts as alleged in such complaint, other than jurisdictional facts, are true and waivers and other provisions as required by the Commission's Rules; and

The Commission having thereafter considered the matter and having determined that it had reason to believe that the respondent has violated the Act, and that a complaint should issue stating its charges in that respect, and having thereupon accepted the executed consent agreement and placed such agreement on the public record for a period of sixty (60) days, now in further conformity with the procedure prescribed in Section 2.34 of its Rules, the Commission hereby issues its complaint, makes the following jurisdictional findings, and enters the following order:

1. Respondent Victoria Bie d/b/a Body Gold is a sole proprietor doing business under and by virtue of the laws of the State of California, with her office and principal place of business located at 5930 La Jolla Hermosa Ave., La Jolla, California.

2. The Federal Trade Commission has jurisdiction of the subject matter of this proceeding and of the respondent, and the proceeding is in the public interest.

ORDER

DEFINITIONS

For the purposes of this order:

1. "*Competent and reliable scientific evidence*" shall mean tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results; and

2. "*Clearly and prominently*" as used herein shall mean as follows:

(a) In a television or videotape advertisement: (1) an audio disclosure shall be delivered in a volume and cadence and for a duration sufficient for an ordinary consumer to hear and comprehend it; and (2) a video disclosure shall be of a size and shade, and shall appear on the screen for a duration sufficient for an ordinary consumer to read and comprehend it.

(b) In a print advertisement, the disclosure shall be in close proximity to the representation that triggers the disclosure in at least twelve (12) point type.

(c) In a radio advertisement, the disclosure shall be delivered in a volume and cadence sufficient for an ordinary consumer to hear and comprehend it.

I.

It is ordered, That respondent Victoria Bie, doing business as Body Gold or under any other name, and respondent's agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of Chromium Picolinate, 24K with Chromium Picolinate, Daily Energy Formula, CitriGold, or any food, dietary supplement, or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. 55, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such product causes, aids, facilitates or contributes to reducing body fat;

B. Such product causes, aids, facilitates or contributes to causing weight loss;

C. Such product causes, aids, facilitates or contributes to causing rapid weight or body fat loss;

D. Such product causes or assists in causing weight or fat loss without dieting or strenuous exercise;

E. Such product reduces serum cholesterol levels;

F. Such product increases human metabolism;

G. Such product increases lean body mass and builds muscle;

H. Such product increases energy or stamina;

I. Such product controls appetite and/or craving for sugar; or

J. Such product regulates or controls blood sugar;

unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

II.

It is ordered, That respondent Victoria Bie, doing business as Body Gold or under any other name, and respondent's agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of L-Carnitine, Super Fat Burner Formula, or any food, dietary supplement, or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. 55, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, do forthwith cease and desist from representing, in any manner, directly or by implication, that:

A. Such product improves fat metabolism, which causes loss of body fat;

B. Such product causes, aids, facilitates or contributes to achieving fat loss;

C. Such product causes, aids, facilitates or contributes to achieving weight loss;

D. Such product causes, aids, facilitates or contributes to muscle toning; or

E. Such product enhances athletic performance and/or stamina;

unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

III.

It is further ordered, That respondent Victoria Bie, doing business as Body Gold or under any other name, and respondent's agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division or other device, in connection with the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of any food, dietary supplement, or drug, as "food" and "drug" are defined in Section 15 of the Federal Trade Commission Act, 15 U.S.C. 55, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, do forthwith cease and desist from making, in any manner, directly or by implication, any representation regarding the performance, benefits, efficacy, or safety of such product, unless, at the time of making such representation, respondent possesses and relies upon competent and reliable scientific evidence that substantiates the representation.

IV.

It is further ordered, That respondent Victoria Bie, doing business as Body Gold or under any other name, and respondent's agents, representatives, and employees, directly or through any partnership, corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, packaging, advertising, promotion, offering for sale, sale, or distribution of any product or program, in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, do forthwith cease and desist from misrepresenting, in any manner, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test or study.

V.

It is further ordered, That respondent Victoria Bie, doing business as Body Gold or under any other name, and respondent's agents, representatives, and employees, directly or through any partnership,

corporation, subsidiary, division or other device, in connection with the advertising, packaging, labeling, promotion, or offering for sale, sale or distribution of any product or program in or affecting commerce, as "commerce" is defined in Section 4 of the Federal Trade Commission Act, 15 U.S.C. 44, do forthwith cease and desist from representing, in any manner, directly or by implication, that any endorsement (as "endorsement" is defined in 16 CFR 255.0(b)) of a product or program represents the typical or ordinary experience of members of the public, who use the product or program, unless at the time of making such a representation, the representation is true, and respondent possessed and relied upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

Provided, however, respondent may use such endorsements if the statements or depictions that comprise the endorsements are true and accurate, and if respondent discloses clearly and prominently and in close proximity to the endorsement:

- a. What the generally expected performance would be in the depicted circumstances; or
- b. The limited applicability of the endorser's experience to what consumers may generally expect to achieve, *i.e.*, that consumers should not expect to experience similar results.

VI.

Nothing in this order shall prohibit respondent from making any representation that is specifically permitted in labeling for any product by regulations promulgated by the Food and Drug Administration pursuant to the Nutrition Labeling and Education Act of 1990.

VII.

Nothing in this order shall prohibit respondent from making any representation for any drug that is permitted in labeling for any such drug under any tentative final or final standard promulgated by the Food and Drug Administration, or under any new drug application approved by the Food and Drug Administration.

VIII.

It is further ordered, That for three (3) years after the last date of dissemination of any representation covered by this order, respondent shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in her possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

IX.

It is further ordered, That respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in the company, such as dissolution, assignment, or sale resulting in the emergence of a successor entity, the creation or dissolution of subsidiaries or affiliates, or any other change in the company that may affect compliance obligations arising under this order.

X.

It is further ordered, That the respondent shall, within thirty (30) days after service of this order, distribute a copy of this order to all agents, representatives, or employees engaged in the preparation or placement of advertisements, promotional materials, product labels or other sales materials covered by this order, and shall obtain from each such agent, representative or employee a signed statement acknowledging receipt of the order.

XI.

It is further ordered, That respondent shall, within sixty (60) days after service of this order and at such other times as the Federal Trade Commission may require, file with the Commission a report, in writing, setting forth in detail the manner and form in which she has complied with this order.

XII.

This order will terminate twenty years from the date of its issuance, or twenty years from the most recent date that the United States or the Federal Trade Commission files a complaint (with or without an accompanying consent decree) in federal court alleging any violation of the order, whichever comes later; provided, however, that the filing of such a complaint will not affect the duration of:

A. Any paragraph in this order that terminates in less than twenty years;

B. This order's application to any respondent that is not named as a defendant in such complaint; and

C. This order if such complaint is filed after the order has terminated pursuant to this paragraph.

Provided further, that if such complaint is dismissed or a federal court rules that the respondent did not violate any provision of the order, and the dismissal or ruling is either not appealed or upheld on appeal, then the order will terminate according to this paragraph as though the complaint was never filed, except that the order will not terminate between the date such complaint is filed and the later of the deadline for appealing such dismissal or ruling and the date such dismissal or ruling is upheld on appeal.

IN THE MATTER OF

CONOPCO, INC.

CONSENT ORDER, ETC., IN REGARD TO ALLEGED VIOLATION OF
SECS. 5 AND 12 OF THE FEDERAL TRADE COMMISSION ACT*Docket C-3706. Complaint, Jan. 23, 1997--Decision, Jan. 23, 1997*

This consent order prohibits, among other things, Conopco, Inc., a New York-based manufacturer of margarine and spreads, doing business as Van Den Bergh Foods Company, from misrepresenting the amount of fat, saturated fat, cholesterol or calories in any spread or margarine; and requires the respondent to have adequate scientific substantiation for claims that any margarine or spread reduces the risk of heart disease, or causes or contributes to a risk factor for any disease or health-related condition. In addition, the consent order requires, for three years, that advertisements for Promise margarine or spreads must include the total fat disclosure and must disclose either the percentage of calories derived from fat or the fact that the product is not low in fat.

Appearances

For the Commission: *Anne V. Maher, Rosemary Rosso, Maureen Enright and Jill Samuels.*

For the respondent: *Nancy Schnell, New York, N.Y.*

COMPLAINT

The Federal Trade Commission, having reason to believe that Conopco, Inc., doing business as Van Den Bergh Foods Company ("respondent"), has violated provisions of the Federal Trade Commission Act, and it appearing to the Commission that a proceeding by it in respect thereof would be in the public interest, alleges:

PARAGRAPH 1. Respondent is a New York corporation with its office and principal place of business located at 390 Park Avenue, New York, New York. Van Den Bergh Foods Company is an unincorporated operating division of Conopco, Inc. Conopco, Inc. is a wholly-owned subsidiary of Unilever United States, Inc., a Delaware corporation with its office and principal place of business also located at 390 Park Avenue, New York, New York.

PAR. 2. Respondent, through its operating division known as Van Den Bergh Foods Company, has manufactured, advertised, labeled, offered for sale, sold and distributed margarines and spreads, including Promise spread, Promise Extra Light margarine and Promise Ultra (26%) spread (hereinafter sometimes collectively referred to as "Promise margarines and spreads") and other foods to consumers. Promise spread, Promise Extra Light margarine and Promise Ultra (26%) spread are "foods" within the meaning of Sections 12 and 15 of the Federal Trade Commission Act.

PAR. 3. The acts and practices of respondent alleged in this complaint have been in or affecting commerce as "commerce" is defined in Section 4 of the Federal Trade Commission Act.

PAR. 4. Respondent has disseminated or has caused to be disseminated advertisements for Promise margarines and spreads, including but not necessarily limited to the advertisements attached as Exhibits A through E. These advertisements contain the following statements and depictions:

A. "HEART DISEASE: NATION'S #1 KILLER" [Depiction of Newspaper Headline] [SFX: Dramatic Tone]

MUSIC: YOU MAKE ME FEEL SO YOUNG. YOU MAKE ME FEEL THERE ARE SONGS TO BE SUNG.

[Depiction of an adult male with two young children, one child male and the other female]

[Depiction of a plate of pancakes with two heart-shaped pats of margarine on the pancakes; behind the plate is a package of Promise spread (stick form), with the following statements on the package label: "Low in Saturated Fat" and "NO CHOLESTEROL"]

[Depiction of adult male smiling and looking down, moving to depiction of the young girl smiling and looking up]

"HEALTH TODAY Serum Cholesterol: the warning is real." [Depiction of Newspaper Headline] [SFX: Dramatic Tone] MUSIC: AND EVERY TIME I SEE YOU GRIN ...

[Depictions of the adult male with the two children] "FIT -OR- FAT"

[Depiction of Newspaper Headline, shown several times] [SFX: Printing Press Sounds]

VOICEOVER: "Promise spread has no cholesterol" [Depiction of the adult male with the two children; a super at the bottom of the screen states: "Include Promise as part of a low saturated fat, low cholesterol diet."]

VOICEOVER: "...and is lower in saturated fat than leading margarines." [Depiction of a knife spreading margarine on pancakes with a package of Promise spread (stick form) behind the plate; the Promise package label states "Low in Saturated Fat" and "NO CHOLESTEROL" and a super at the bottom of the screen continues to state: "Include Promise as part of a low saturated fat, low cholesterol diet."]

MUSIC: YOU MAKE ME FEEL SO YOUNG [Depiction of the adult male with two children at a table moving to screen depicting the female child eating and then to a depiction of the male child eating and then to the adult male eating]

VOICEOVER: "Promise. Get Heart Smart."

[Depiction of packages of Promise spread (tub form), Promise spread (stick form) and Promise Extra Light margarine in top third of screen] A super in large caps in the center of screen reads: "PROMISE. GET HEART SMART" [Depiction of the male adult with the two children in the bottom of the screen] (Exhibit A).

B. "GET HEART SMART." (Exhibits A through E).

C. Depiction of Heart-Shaped Pat[s] of Margarine in conjunction with depictions of packages of Promise spread, Promise Extra Light margarine and Promise Ultra (26%) spread. (Exhibits A through E).

D. "Low in Saturated Fat." [Depiction of package of Promise spread (stick form)] (Exhibit B).

E. "ZERO FAT BREAKTHROUGH" [Depiction of Headline] [SFX MUSICAL/ELECTRONIC]

* * * * *

"EXCLUSIVE THE FIRST Fat Free MARGARINE" [Depiction of Headline] SFX COMPUTER PRINTER

* * * * *

VOICEOVER: "Discover Fat Free Promise Ultra." [Depiction of plate with two muffin halves with heart-shaped pats of margarine on the muffins; behind the plate is a package of Promise Ultra Fat Free spread]

"Zero Fat with ...just five delicious calories a serving." [Depiction of young girl with three adults, moving to depiction of a knife spreading margarine on a muffin half]; a super at the bottom of the screen states: "Include Promise Ultra as part of a low saturated fat, low cholesterol diet."]

[Depiction of adults and young girl at a table; a super at the bottom of the screen states: "Include Promise Ultra as part of a low saturated fat, low cholesterol diet."]

* * * * *

VOICEOVER: It's the first fat free...margarine. Definitely one of a kind." [Depiction of people at table moving to male adult eating muffin with margarine on it]

"SPREAD THE FAT FREE NEWS" SFX ELECTRONIC

* * * * *

VOICEOVER: "Regular or Fat Free Promise Ultra ... " [Depiction of packages of Promise Ultra (26%) spread and Promise Ultra Fat Free spread in top third of screen]

VOICEOVER: "Get Heart Smart." [Depiction of packages of Promise Ultra (26%) spread and Promise Ultra Fat Free spread in top third of screen; a super in large caps in the center of screen reads: "GET HEART SMART"] (Exhibit D).

PAR. 5. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A through E, respondent has represented, directly or by implication, that eating Promise spread, Promise Extra Light margarine or Promise Ultra (26%) spread helps reduce the risk of heart disease.

PAR. 6. Through the use of the statements and depictions set forth in the advertisements referred to in paragraph four, including

but not necessarily limited to the advertisements attached as Exhibits A through E, respondent has represented, directly or by implication, that at the time it made the representation set forth in paragraph five, respondent possessed and relied upon a reasonable basis that substantiated such representation.

PAR. 7. In truth and in fact, at the time it made the representation set forth in paragraph five, respondent did not possess and rely upon a reasonable basis that substantiated such representation. Therefore, the representation set forth in paragraph six was, and is, false and misleading.

PAR. 8. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and D, respondent has represented, directly or by implication, that Promise spread and Promise Extra Light margarine [Exhibit A] and Promise Ultra (26%) spread [Exhibit D] are low in total fat.

PAR. 9. In truth and in fact, Promise spread, Promise Extra Light margarine and Promise Ultra (26%) spread are not low in total fat. At the time respondent made the representation, Promise spread contained 9.5 grams of fat per 14 gram serving and 34 grams of fat per 50 grams; Promise Extra Light margarine contained 5.6 grams of fat per 14 gram serving and 20 grams of fat per 50 grams; and Promise Ultra (26%) spread contained 3.64 grams of fat per 14 gram serving and 13 grams of fat per 50 grams. Therefore, the representation set forth in paragraph eight was and is false and misleading.

PAR. 10. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not necessarily limited to the advertisements attached as Exhibits A and B, respondent has represented, directly or by implication; that Promise spread is low in saturated fat.

PAR. 11. In truth and in fact, Promise spread is not low in saturated fat. At the time respondent made the representation, Promise spread contained 1.6 grams of saturated fat per 14 gram serving with 17 percent of calories derived from saturated fat. Therefore, the representation set forth in paragraph ten was and is false and misleading.

PAR. 12. Through the use of the statements and depictions contained in the advertisements referred to in paragraph four, including but not limited to the advertisement attached as Exhibit A,

respondent has represented, directly or by implication, that Promise spread and Promise Extra Light margarine have no dietary cholesterol. Respondent has failed to adequately disclose that Promise spread and Promise Extra Light margarine contain a significant amount of total fat. In light of respondent's representation that Promise spread and Promise Extra Light margarine have no dietary cholesterol, the significant total fat content of the products would be material to consumers and the failure to adequately disclose this fact is deceptive.

PAR. 13. The acts or practices of respondent, as alleged in this complaint, constitute unfair or deceptive acts or practices and the making of false advertisements in or affecting commerce in violation of Sections 5(a) and 12 of the Federal Trade Commission Act.